S. HRG. 100-575

IMPLEMENTATION OF THE ASBESTOS HAZARD EMERGENCY RESPONSE ACT

JOINT HEARING

BEFORE THE

SUBCOMMITTEES ON
HAZARDOUS WASTES AND TOXIC
SUBSTANCES AND SUPERFUND
AND ENVIRONMENTAL OVERSIGHT

OF THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

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CONTENTS

OPENING STATEMENTS

	Page
Baucus, Hon. Max, U.S. Senator from the State of Montana	1
Lautenberg, Hon. Frank R., U.S. Senator from the State of New Jersey	10
Stafford, Hon. Robert T., U.S. Senator from the State of Vermont	21
Warner, Hon. John W., U.S. Senator from the State of Virginia	17

WITNESSES

Anderson, Robert, executive director, Montana School Boards Association	36
Written statement	134
August, James, occupational health specialist, American Federation of State, County, and Municipal Employees	33
Written statement	113
Echols, C. William, Jr., Gobbell Hays Partners, Inc	45
Written statement	165
Fields, Hon. Jack, a Representative in Congress from the State of Texas	6
Written statement	56
Florio, Hon. James, a Representative in Congress from the State of New Jersey	5
Written statement	53
Guttman, Reuben A., counsel, Service Employees International Union	31
Written statement	96
Lynch, Ann, first vice president, National Parent-Teachers Association	29
Written statement	86
McDonough, Richard C., executive vice president, regulatory affairs, Fidelity Environmental Insurance Co., accompanied by Emil DeVito, president	48
Written statement	189
Melcher, Hon. John, U.S. Senator from the State of Montana	3
Moore, Hon. John A., Assistant Administrator, Office of Pesticides and Toxic Substances, Environmental Protection Agency	17
Written statement	63
Oxley, Hon. Michael, a Representative in Congress from the State of Ohio	8
Schleife, Rosilyn, National Education Association	35
Written statement	121
Welch, John F., president, Safe Buildings Alliance	46
Written statement	175

ADDITIONAL STATEMENTS SUBMITTED FOR THE RECORD

American Society of Mechanical Engineers	206
Association of School Business Officials International	207
Kaselaan & D'Angelo Associates, Inc	221
Lima, Ohio, City Schools	60
Mortgage Bankers Association of America	233
National Conference of State Legislatures	247
Texas Association of School Boards	250

IMPLEMENTATION OF THE ASBESTOS HAZARD EMERGENCY RESPONSE ACT

TUESDAY, MARCH 15, 1988

U.S. SENATE, COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS, SUBCOMMITTEES ON HAZARDOUS WASTES AND TOXIC SUBSTANCES AND SUPERFUND AND ENVIRONMENTAL OVERNIGHT,

Washington, DC.

The subcommittees met, pursuant to notice, at 9:56 a.m., in room 406, Dirksen Senate Office Building, Hon. Max Baucus (chairman of the Subcommittee on Hazardous Wastes) presiding.

Present: Senators Baucus, Lautenberg, Reid, and Stafford.

OPENING STATEMENT OF HON. MAX BAUCUS, U.S. SENATOR FROM THE STATE OF MONTANA

Senator BAUCUS. The committee will come to order.

This hearing concerns asbestos in public schools and also the EPA study concerning asbestos in public and commercial buildings.

Building materials that contain asbestos have enjoyed wide use in the United States since the 1930's, and only recently have we as a Nation realized the health threat posed by exposure to asbestos particles in the air. When inhaled, these fibers can penetrate the lungs and cause a debilitating lung disease called asbestosis. They also cause two types of cancer which obviously are very debilitating and fatal.

As the health hazard from asbestos became clear, government acted to develop regulations and offered local officials guidance on how to reduce exposure to asbestos. Regulations have been implemented to protect schools, the workplace, and to direct the renovation and demolition of buildings that contain asbestos.

In 1982 the Asbestos in Schools bill promulgated by EPA required inspections for friable materials, the sampling and analysis of these materials to determine if they contain asbestos and for notification to the public of their findings.

Two years later Congress enacted the Asbestos School Hazard Abatement Act which authorized $600 million in grants and loans to schools over a 6-year period for abatement of hazardous conditions involving asbestos.

In 1986 Congress decided that tougher action was needed, that the health threat from asbestos warranted stronger regulations; inspection and notification of the presence of asbestos just didn't offer enough protection.

Thus, the Asbestos Hazard Emergency Response Act was written. It called for certification of all asbestos contractors who work in schools. It also required local education agencies to have buildings inspected for asbestos and develop management plans by October 12th, 1988. Under the act, these plans must be implemented by July 9th, 1989.

I believe the goals of the act are correct. However, educators throughout the country are struggling to meet the guidelines and the deadlines. From my own investigation, I have concluded that a good faith effort is being made by local officials to meet the goals.

I therefore have introduced legislation to extend both deadlines by one year. School systems need in many instances, if not all, more time to put together the best asbestos management plans possible. We should help them.

That brings us to the subject of today's hearing, the implementation of the AHERA program. What progress has been made by schools to fulfill the intent of the law? Are there a sufficient number of trained and certified asbestos inspectors, accredited laboratories, management planners and abatement contractors to accomplish the goals of the legislation?

While the act does chart a course for action, it also gives local managers enough flexibility to do the job. We know that the presence of asbestos in a building does not in and of itself pose a threat. The threat is caused by friable asbestos in the air, not necessarily by materials that contain asbestos that are in good condition.

Asbestos in any building material should be a cause for concern and must be monitored. In some cases, where the material is damaged, removal is the best option. In other cases, monitoring may be sufficient.

How well we are making that determination is an important focus of today's discussion. Congress did move quickly to combat the threat of asbestos in the Nation's schools, but clearly the problem is everywhere.

I have introduced legislation putting in place the inspection and management program for asbestos in Federal buildings. Senator Stafford has introduced legislation expanding this proposal to include all commercial buildings.

EPA, on the other hand, has concluded that there is no need for a comprehensive inspection and management program for asbestos in public and commercial buildings at this time. Although I don't necessarily agree with EPA's recommendation, I value it, and I intend to examine this issue more closely in a separate hearing.

In my opinion, the question is not whether Congress should enact legislation to protect people from asbestos in commercial and Federal buildings; it is a question of to what degree we chose to safeguard the health of our fellow citizens. How much our government should involve itself in the control of asbestos in public and private buildings of great concern to this committee and our guests today.

The bottom line is protecting people from the well known dangers. We don't want to alarm people. We want to protect their health. We have the technology and the knowledge on how to deal with asbestos. Now we must do our best today to put that knowledge to best use.

Our first witness is Senator John Melcher from my home State of Montana. Senator Melcher has been very active in this area and in fact has introduced legislation.

John, I very much welcome you before this committee and look forward to your testimony.

STATEMENT OF HON. JOHN MELCHER, U.S. SENATOR FROM THE STATE OF MONTANA

Senator MELCHER. Thank you, Max. I very much appreciate the fact that you called this hearing so quickly. I think it is necessary to do something on this issue.

The AHERA legislation that we passed without objection in the fall of 1986 has set in motion some things such that EPA and the schools really can't meet the deadlines that have been established. So there are two issues that I see in regard to this. First, I believe that it is an insurmountable problem that schools across the Nation are facing in their efforts to meet the AHERA deadlines. The second and related issue concerns the inadequate funding, or financing that the Federal Government will provide for the program.

So, the bill I have introduced addresses those two concerns by moving the deadlines back by a year and a half; the bill also seeks to more fairly distribute the substantial financial burden of the program by increasing authorizations for appropriations into the asbestos abatement assistance program from $100 million per year to $150 million per year.

There is an October deadline in the existing law, and schools would face the threat of penalties of up to $5,000 a day if they weren't up to snuff by October. That's a real concern because, first of all, there are not enough trained inspectors, nor are there enough management planners, especially in our State, to meet that deadline. I don't believe there are enough qualified labs to analyze the samples in addition to the lack of trained inspectors and trained management planners.

If we were to get trained inspectors or management planners for Montana, I guess the only way to do it is to have them fly to Salt Lake City in Utah or Denver for training where the courses are often full and the waiting lists are growing longer.

So these are real roadblocks. I think there is a legitimate concern on the part of many school districts that they are victims of circumstances where the training program and the number of labs available to analyze materials simply puts them in a position of no-win, where there is no possibility of meeting the October deadline.

I would suspect that it isn't just our State, that other school districts across the country find similar problems to what we have in Montana.

I don't believe that there is an imminent threat to the school children and school personnel, and I believe, Max, you have indicated that, and I accept your authority on this.

I believe that the threat comes when the materials are improperly handled and managed. My greatest concern is unless we extend the current deadlines and allow the schools enough time to proper-

ly prepare for the job, we could risk running some real hazards from the threat of exposure.

As to the money, we've got a freeze on the increase of property tax in Montana. So schools and the school districts are struggling to find enough money in their budget to maintain the level of the instruction and make available educational opportunities for these school children. So this all presents an additional burden on the school budgets. That's why I believe it is essential that the Federal Government participate in a more meaningful way in the costs that are involved. I believe that authorizing an additional $150 million per year is a very modest amount to assist school districts in meeting this threat.

Senator BAUCUS. Thank you very much, John. I guess the question that comes to mind is whether, if we had the resources and the money, the better alternative would be to provide the resources and the money to those schools and school districts that are under the gun.

I know in our State of Montana our schools are very financially strapped, and it is partly due to the State's economy that perhaps is not as booming as some other States. Second, there was a recent State judicial decision which made it even more difficult for States to raise the revenue support in schools. I am wondering if as an alternative to deadline extension, whether a preferable alternative would be resources and dollars and also well-trained contractors and laboratories, assuming the resources could be made available. I'm just curious what your reaction might be to that.

Senator MELCHER. Well, I think it's both. If they are going to have a plan that can be approved, I think the time—let's see, this is the middle of March. The time between now and the October deadline is pretty short. Considering the mechanics of this, and not just the money, I suspect that schools are going to have to have additional time in order to get approved management plans.

Senator BAUCUS. So your basic point is that in school districts you are familiar with, that is, in the State of Montana, that they are just so financially strapped and due to the short time that is available, they just can't get the job done anyway and need an extension?

Senator MELCHER. Yes, that's my view. I think we are going to find that unless you do have a good management plan that the real dangers, the real hazards involved are when they have to correct the situation to remove the asbestos because then, while it probably isn't an imminent threat as it sits right now, when they implement a plan to correct it, there is a hazard. So I think it is very obvious that a training program is necessary and approval of a management plan is very much necessary to avoid the hazard. So I think we need both the time and the money.

Senator BAUCUS. There are going to be a lot of witnesses here today. They will be asked a lot of questions to try to get to the bottom of this. I very much appreciate your efforts and legislation you have introduced.

Senator MELCHER. I want to emphasize that having this hearing now is very good. I certainly commend you for doing it.

Senator BAUCUS. Thank you.

Let's include all of the members of the House who are here on the same panel just to get things moving along. I see Jim Florio, Congressman Oxley, and Congressman Fields are here. Why don't all three of you form a panel and let's move this along.

Who wants to go first? Jim, why don't you go ahead then.

STATEMENT OF HON. JAMES FLORIO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. FLORIO. Thank you very much, Senator. I am pleased to be here, particularly joined by my two distinguished colleagues. I have a statement that I would ask be put into the record in its entirety, and in order to conserve the committee's time, I will just highlight some of the points that I think are most significant.

Senator BAUCUS. Without objection.

Mr. FLORIO. I commend you for conducting this hearing dealing with the question of the hazards of asbestos and EPA's response to the health hazards that are documented. We are beyond the point of talking about whether this is a problem. It is clearly a problem.

I am pleased to be here before these committees. My colleague from New Jersey has been someone who I have cooperated with over the last number of years in trying to focus on the problem that exists across the Nation, but we in New Jersey have a particularly serious problem.

Asbestos is of sufficient danger to people that the Congress acted in 1986 on specific legislation focusing on the problem of asbestos in the schools when it passed the Asbestos Hazard Emergency Response Act. That act, aside from requiring EPA to set standards for asbestos identification and abatement in local schools, also required EPA to conduct a study to tell us the scope and the threat of asbestos exposure in public buildings and to recommend steps to reduce the threat from such exposure.

I hope that you share my concern about the results of the study that EPA has just announced. EPA found that 500,000 office buildings, apartment houses, stores and commercial buildings contained damaged asbestos, friable asbestos, which of course is the type of material that we are most concerned about. Yet despite this hazard which is documented by EPA, the agency decided that the response which was appropriate was no response. That is particularly disconcerting.

The way that EPA phrased its non-response was to say that we have to play out the program at the school level to try to resolve the school problem first before we even focus on making recommendations as to how to deal with the bigger problem. EPA has told us that we have to wait and see what happens in the asbestos in the school program. I think that is clearly unacceptable.

I am, by the way, going to be introducing legislation to move in an incremental way to the next level of concern, and I happen to believe that that is governmental buildings. I think the goal is that ultimately we want to have an asbestos-free environment. Realistically we are not going to get there immediately, but I think we started with schools, I think the next level that we should be talking about is governmental buildings, and then go from there as resources allow.

There are problems with the asbestos in the school program. They are largely of EPA's making. Some schools are legitimately concerned about meeting the October deadline for school plans and school inspections. I am not convinced that these problems require a change in the deadlines. If EPA provides more opportunities for the training of inspection personnel, schools can have their abatement plans ready by October. Actual abatement work is not required to begin until the summer of 1989.

I would just call to the committee's attention that this is not something that has just been floated out there as a requirement in the last two years. EPA required inspections to be undertaken I believe in 1982 or in 1983 in all of our schools. The 1986 law made it even firmer as a requirement that inspections be undertaken and superimposed upon that the plan deadlines that are now in effect.

I think if EPA were to move more aggressively in dealing with the potential for shortages of accredited inspectors and managers, that the personnel can be made available, even to comply with the deadlines that are in the law and have been in the law for the last two years.

Keep in mind, Mr. Chairman, both chairmen, that we are talking about a serious health hazard in the schools, and to constantly be deferring without some assurance that something is going to happen means that conceivably a year from now or two years from now, whatever it is someone extends the deadlines to, we could be in a situation that is no better, or even worse off, than the present one.

I would say as a total fallback position, if the Congress is inclined to extend any of these deadlines, they should not be just blanket extensions. They should be extensions only if EPA is required to certify on a site-specific, school-by-school basis what it is that are the specific problems that justify authorizing waivers. That is not my preferred approach, but I am just suggesting—if that is the approach that is going to be undertaken, that is, the extension, it should not be a free ride of reducing the pressure to move in the direction of trying to clean up these schools in the most expeditious fashion.

Mr. Chairman, I know there are other people here, so I am going to stop at this point, and I would be happy to respond, at the conclusion of my colleagues' statements, to any questions you have.

Senator BAUCUS. Thank you very much, Congressman. You have been a real leader in this area and an expert. We very much appreciate your presence here.

Congressman Oxley or Fields, whoever wants to go first.

STATEMENT OF HON. JACK FIELDS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. FIELDS. My name is Jack Fields, and I represent a Houston metropolitan district in Texas.

Mr. Chairman, I will do the same thing that Mr. Florio did and submit my statement for the record if I could. I also have a letter from the Texas Association of School Boards that I would like to submit (see p. 59), and also the testimony of the Texas Association

of School Boards submitted to the Subcommittee for this hearing today. (See p. 250.)

Senator BAUCUS. Without objection, it is all included.

Mr. FIELDS. Mr. Chairman, I supported this legislation in 1986, and now I am joining with Congressman Oxley in sponsoring and advocating H.R. 3893. What I would like to do is just focus on the problems that we are having in Texas with this particular piece of legislation.

The statutory timetable is causing problems in school districts around the country, but particularly in Texas which has 1,065 public school districts and more than 900 private schools that are subject to the requirements of this act.

Our school officials are seriously concerned that the too-tight time frame will cause inspections and response actions to be performed in an unsafe and incomplete manner, which is directly contrary to what was intended by this legislation.

Let me use Texas as an example. The regulations issued by the EPA in October of 1987 correctly assumed that many school districts would want to self-manage at least part of the assessment and management plan process, and pursuant to that assumption, EPA has designated approved training programs to accredit asbestos inspector and management planning personnel. However, only two such training schools have been approved in Texas.

Perhaps this is the problem the chairman was talking about just a moment ago, but this is far too few to train personnel from 1,065 public school districts and 900 private schools. Although additional classes have been scheduled, the two programs can handle no more than one-third of those personnel who may require accredited asbestos inspector training in Texas. Therefore, it's not possible for the majority of public school districts in Texas to self-manage the process within the time frame set by the original legislation.

This also causes further problems, and I think this is what your senator was alluding to just a moment ago. School districts whose budgets were set for 1988 prior to the issuance of final regulations find themselves in the no-win situation of accepting inflated contracting costs, which is due to the high demand caused by the law, or they face fines and penalties under the legislation.

For example, I heard of one situation in Texas where a small district containing five buildings requiring inspection received a bid from a contractor for $125,000. When the school district official checked with others who were knowledgeable, he was told that the cost would probably be only $5,000 if the district could self-manage the process. Obviously that's not a small difference, particularly for a very small school district.

On the other hand, if that school district fails to comply with the deadlines or other aspects of the regulations, fines can result up to $5,000 per day. Criminal charges also may be filed against school district officials.

Finally, Mr. Chairman, in Texas the Department of Health is designated as the reviewer of management plans. Under the law the Texas Department of Health will have 90 days to disapprove a plan. If they miss the 90-day cutoff the plan is automatically approved. With 1,065 plans to approve, it is highly likely that some

plans will not be reviewed within the 90-day time period, therefore allowing inadequate plans to be approved.

Mr. Chairman, the situations I have outlined, I think, are contrary to the original intent and purpose of the legislation that was passed.

Senator BAUCUS. Thank you.

Mr. Oxley?

STATEMENT OF HON. MICHAEL OXLEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. OXLEY. Thank you, Mr. Chairman, and thank you for calling the hearing today.

My interest in this problem was sparked last November when I began hearing from school districts in my own district in Ohio. A month earlier in October of 1987 EPA had published the final regulations implementing AHERA. School districts began calling me and my colleagues because under the law they had only one year after the implementing rules became final to comply with AHERA's school inspection and management plan development requirements.

While school administrators and boards have raised a number of concerns with AHERA, such as the need for increased Federal funding, something that Senator Melcher addressed, the tight deadlines under AHERA have raised the most immediate concern.

We found that State programs to certify asbestos contractors in many cases were behind schedule leaving school districts few choices as to who to hire and, I suspect, what to pay. For example, there was a wide discrepancy in price quotes school districts received from different contractors to do the same work.

For example, one school district's quotes ranged from approximately $63,000 to over $142,000 to do the inspections and management plans for the district's 17 buildings. The possibility that some unscrupulous firms might be taking advantage of school districts under the gun to meet the AHERA deadlines should not be dismissed lightly.

Because the few accredited contractors are so much in demand, they either must turn away work, therefore leaving the schools with no way to meet the deadline, or accept the work and fit it into their already overloaded work schedules. We have also heard of some companies simply choosing not to participate under the AHERA program, possibly because more money can be made doing asbestos work for private industry.

Unfortunately, we have even heard that some companies are cutting corners to keep up with demand.

So not only are the tight deadlines forcing some schools to pay overinflated prices, in some cases the tight deadlines are compromising the health of our children by helping cause shoddy inspections and insufficient management plans.

Mr. Chairman, I want unsafe asbestos out of our schools just as much as any other member of Congress or concerned parent. But I want the job done properly. If the deadlines are too short, school districts might not take the time needed to fully analyze the condition of the asbestos and might resort to unnecessary wholesale re-

movals done by persons not fully qualified, and done at inflated prices.

Industry sources estimate that a vast majority of the firms on which schools will depend for inspections, management plans and abatement are not qualified to provide these services. The last thing we want is to foster an epidemic of dangerous removals that raise asbestos fiber levels instead of lowering them, thereby threatening the health of the same school children we are trying to protect.

We already have evidence of this problem in EPA's studies of school systems in Ohio showing high asbestos levels long after removal actions had been completed.

Extending the deadlines will give EPA and the States time to properly train the contractors upon whom our schools will depend.

Last month I introduced legislation that would extend the AHERA deadlines for just over one year. Congressman Fields was an original co-sponsor. In the House we have over 70 co-sponsors from both parties, including the leadership of both parties, and representing all regions of the country.

This is by no means a local problem or one confined to a few scattered school districts. It is a national problem that requires a national solution.

Obviously I do not want my bill to be interpreted by school boards as a signal that they can stop work under AHERA. On the contrary, they must continue their efforts to comply. I just don't want to see a large number of school districts deemed in noncompliance and subject to the stiff fines stipulated under AHERA through no fault of their own.

Mr. Chairman, it concerns me that if indeed EPA has dragged its heels, as our friend from New Jersey has indicated, or if it was the fault of the Congress for setting unnecessarily short deadlines, the fact is that school districts all over this country are caught in the middle of that decision. Whether it in fact is EPA's fault or in fact the fault of the Congress, it seems to me that the school districts should be given the benefit of the doubt in extending the deadline to allow them to work out their own particular problems.

Mr. Chairman, in conclusion I would like to offer a letter that was sent from the superintendent of the Lima City Schools, the largest school district in my congressional district, to Senator Stafford and others pointing out some of the specific problems that this school district had.

It is interesting to note that there are a number of letters that have come in that point out many of the same problems that school districts have had, both large and small, throughout Ohio, and throughout the country. I would ask that this letter be made part of the record (see p. 250.)

I thank the chair for his indulgence.

Senator BAUCUS. Without objection.

Thank you all very much.

We have a unique situation here. This is a joint hearing, and we have joint chairmen. We are joined by Senator Lautenberg from New Jersey who is the chairman of the Superfund and Environmental Oversight Subcommittee of this full committee. So you may be getting questions from both of us at any time.

OPENING STATEMENT OF HON. FRANK R. LAUTENBERG, U.S. SENATOR FROM THE STATE OF NEW JERSEY

Senator LAUTENBERG. Thank you, Senator Baucus. Good friends breed cochairmanship. That's what happened.

I am pleased to welcome my colleagues, but in particular, if you will forgive me, Jim Florio with whom I have worked very closely over the years I have been in the Senate, and with a very particular focus on the environmental issues and protection of the health of our citizens. Congressman Florio, in 1980 was one of the designers, if you will, of Superfund I, as I call it. It has been a program that has taken a lot of pushing and review to get underway. I think it is fair to say, Jim, that as we look at the AHERA program, we are looking at the same conditions.

Senator Baucus and I have called this hearing today to review the asbestos in schools programs and the study of asbestos in public buildings.

One simple fact is clear, and that is we all know asbestos is deadly. When people breathe asbestos fibers, they can develop fatal illnesses years later.

I as a child lived in Patterson, New Jersey where one of the early discoveries of asbestos dangers was made by a renown physician and researcher named Dr. Sellica. A fellow I knew personally very well was an attorney practicing well into his 40 years of age. He got a call from the union who asked him if he worked at any time in the asbestos factory nearby where many of the kids in the high school that I went to did work. He worked there for a few weeks. The union agent suggested to him that he have a physician examine him. Within a year, this man died from lung cancer. He had been exposed to the asbestos process, manufacture for a period of less than a month, as I understand it. I knew the fellow well. It took 20, almost 25 years for the condition to develop.

So I have had a chance firsthand, as we have also seen in other parts of New Jersey where asbestos was manufactured and dealt with, that the dangers can never be exaggerated.

Congress has acted to get this menace out of our schools. We forced EPA to put into place a regulatory program for asbestos in the schools. We passed a law to give needy schools financial help to attack this problem.

But I am concerned that EPA is just not doing enough to get this program up and running, and at this hearing we would like to find out why.

We also want to learn where EPA stands on the next stage of the fight against asbestos, this time in public, commercial, and apartment buildings. We want to know whether our government is at last ready to get serious about the asbestos hazard in schools and other buildings.

Under this administration, EPA has continually driven with one foot on the brakes when it comes to cleaning up asbestos in the schools. The EPA has given inadequate guidance to the schools. Many of us feared that without that guidance some schools might be inadvertently making matters worse. AHERA, the Asbestos Hazard Emergency Response Act of 1986, was this committee's response to that problem.

It sets out a series of steps for EPA and the schools to take, and each step has a tight, and I think reasonable, deadline. Schools have to prepare a management plan by October 12 of this year, one year after EPA put out the regulations. Implementation of the plan must begin by the summer of 1989.

Now we are hearing from some schools that they are not going to be able to meet the deadline for the plans. The plans come before the cleanup.

EPA has a responsibility to do more than meet deadlines, and it should be helping schools to comply. What I would like to hear this morning is whether EPA is doing enough, or whether we need to require EPA to do more. Some are calling for a delay in the October, and I respect your points of view and the difficulty for some of the school systems to get going on this. We need to see if the schools need more time or more tools.

If there are not enough certified inspectors and contractors, what is EPA doing about it? If there are not enough EPA employees to answer the questions of school administrators, what is EPA doing about it? If the schools don't have the money to pay for the AHERA requirements, what is EPA doing about it?

I am concerned that we hear first about the problems from schools. EPA should know what resources are needed to make the program work, and EPA should be up here asking for more resources.

Year after year, the administration tells Congress it doesn't need money for the grant and loan program. That can't be true with AHERA just getting underway. Surely the advent of AHERA is putting new demands on EPA staff.

I am going to be listening for answers to these questions from EPA and from our other witnesses. I will be interested in what they have to say about the next stage in the asbestos fight in public and commercial buildings.

One thing I know, and I know that my colleagues in the House know, is that parents, and teachers, and school employees, and most of our children deserve safe schools. They are not satisfied with excuses; they are looking for action. So we just have to (all of us) push harder to make that happen.

Mr. Chairman, I thank you for the opportunity to share this hearing with you. We all recognize the difficulties of getting programs like this under way. But on the other hand, we have a need to do so because of the people that we are responsible to serve.

Thank you.

Senator BAUCUS. Thank you very much, Senator.

I have some questions for the panel. We are all in agreement—asbestos is a major problem. That's clear.

Second, it is also fairly clear that EPA—maybe Congress is at fault too—has not provided the resources or the wherewithal to begin the cleanup, the management programs and the cleanup, and the abatement program. Obviously there are some school districts that are facing a very severe financial crunch. Most school boards certainly want to provide the safest schools for their children. There's no doubt about that, but yet in the practical world they do face a crunch.

I am wondering, therefore, if your reaction to a middle ground suggested in part by Congressman Florio, namely, some kind of a waiver program or some kind of a program in place, at least from Jim's point of view, as a second or third choice where a school district would apply for a waiver, and if the Governor of a State agrees then EPA would have to then rule on it, perhaps some kind of a hearing to determine whether or not a particular school district deserves it. The main point I am getting at is, maybe some school districts are in a lot better shape, are a lot closer to a greater number of contractors, the laboratories are available, whereas some other school districts are just financially faced with a much different situation.

So is there a middle ground of some kind? I would like the reactions of each of you as to what that middle ground might be.

Jim?

Mr. FLORIO. Mr. Chairman, as I expressed in my testimony, that would be an option of last resort as far as I am concerned. As with so many other environmental issues over the last number of years, the absence of strong enforcement of the laws, this one or other ones, has resulted in some of the problems that we are now lamenting.

In some respects, the way to fill the void out there in terms of availability of contractors, availability of certified inspectors, is to insist and to send this constant message out that if we say something we are going to adhere to it. Then people who want to put the capital into the contracting business, people who want to develop the laboratories will get a consistent message that investing that capital is worth doing.

As of now, what we have had in so many areas across the economic, or rather the environmental spectrum is the sending out of false messages. That discourages the filling of the void with qualified personnel.

I want to emphasize again that the inspection requirements are inspection requirements that grew out of a 1979 lawsuit that EPA settled at that point. So, again, these are not things that have just come on to the scene. The schools have been aware of many of these things.

These deadlines were passed by the Congress overwhelmingly, the President of the United States, who is not necessarily the most environmentally sensitive person in the world, felt strong enough to sign on to these deadlines in signing the legislation. I think they were reasonable.

But I guess if we have to say that there may be some circumstances, some school boards that are located in areas where there is absolutely no access to personnel, there may be justification for a reasonable compromise. But EPA should be required to certify and we should spell out what good faith excuses are for waivers, that certain conditions are complied with before a waiver would be obtained.

Mr. FIELDS. Mr. Chairman, I would just say that from the standpoint of the State of Texas, any modification would be appreciated. But I hope that your committee will focus on those training programs for the people who need to be accredited to be inspectors, and also those who are going to manage and plan because, as I re-

lated earlier, only two such schools have been approved in Texas. They will handle only about a third of the load that is anticipated.

Then, secondly, I pointed out in the testimony that we have another problem, that the Texas Department of Health is responsible for reviewing the management plans. We feel that they are not going to be able to handle the load, and consequently there is a strong potential that some plans will be approved that are not sound plans.

So, when you talk about waivers or you talk about modifications, I hope that you will focus on, among other things, those particular areas.

Mr. OXLEY. Mr. Chairman, there are almost 650 public school districts in the State of Ohio alone. If we are talking about waivers and another layer of bureaucracy to try to work their way through, it seems to me it misses the point.

The purpose of the legislation that Mr. Fields and I introduced was to give the schools some breathing time, give them an extra year to work this out, and also let the contractors know that there was another year so that they wouldn't be holding up the school districts for a price when they knew that the school districts were facing a very difficult and almost impossible deadline.

As the letter from the superintendent of the Lima Schools says, the period of time that elapsed from the passage of AHERA and the publication of rules for implementation significantly reduced the amount of time districts had to develop a strategy to implement the AHERA regulations.

He goes on to say that publication of the AHERA regulations in many instances took place after school districts adopted budgets and/or appropriation measures. That also includes, by the way, the State legislature in terms of their help for public schools.

In our particular instance the money from these projects was not appropriated and, therefore, it is not available until the next fiscal year, unless we were to consider taking funds from educational programs already planned.

So, indeed, the real world is that the school superintendents, while trying desperately to adhere to these regulations and inspections, have found it very difficult, as I indicated in my testimony.

I would certainly say that at the very least we ought to extend that deadline by a year before we start talking about opportunities for waivers.

As to who would pass on those waivers, it seems to me that you are asking for a substantially large amount of work, whether it be EPA or whoever in the bureaucracy, to determine whether those waivers are available given the number of school districts in the country and the number of school districts that are adversely affected by the AHERA legislation.

Senator BAUCUS. We've got a problem. Even though schools were on notice, with the change in the law, as we all know, to require those inspectors be certified, and that, as Congressman Fields has pointed out, has put a real crimp in this area.

Mr. OXLEY. Mr. Chairman, if I could add, it just seems to me that if we don't do anything on the deadline and the deadline comes up, and the pressure is that the school districts that are not in compliance, of which there will be thousands, all are fined $5,000 per day.

I submit to you that there are a lot of members of Congress who are going to be feeling very uneasy when the taxpayers of their particular districts ask the Congress why their own school district and their tax payers are being asked to pay $5,000 a day fines.

I don't think that's realistic. I think it is potentially disastrous, both politically and from a reasonable standpoint as it relates to policy. I just think that now is the chance that we have to fix the law, to provide some leeway for the school districts in a reasonable manner. That's why I applaud your legislation and hope that something positive is done. By the way, our legislation will receive a hearing in the next two to three weeks, I am assured by the chairman of the subcommittee that does have jurisdiction, which is chaired by Congressman Luken if Cincinnati.

Senator BAUCUS. Thank you all very much.

Any questions, Senator Lautenberg, Senator Reid?

Senator LAUTENBERG. Just very briefly.

Mr. Oxley, don't you think that we run the risk of granting everybody an opportunity to delay the process if we put into law an extension or waiver of the deadline as opposed to keeping the pressure on? I mean, you agree, all of you, I heard it in your statements, about the concerns that you have for the risks involved. At one point we ought to say it's time to get started.

If we find out, as we go through this review, that the school districts were unfairly disadvantaged because they didn't have either the information, or just didn't have the capacity, for whatever the reason, skilled contractors, etc., to get going, that might be one condition. But we ought to go through these hearings and find out.

My guess is that there is a lot of simple procrastination in there, that there was time to get some of these programs underway. When I hear our friend from Texas talk about the volume of school districts—Texas is a big State—we don't have quite as many school districts, but what we have in New Jersey are compressed into a lot less space. The very small number of those that you say have either begun to respond or are in the process of developing a plan. What I worry about is whether or not we are just giving them, you used the term "breathing room" in there, and I think of it as kind of a paradox because breathing room is what we want to give the employees, the faculty, the students in the schools. I am concerned just about taking the pressure off.

Mr. OXLEY. I appreciate that, Senator. I think that, at least from my experience in talking with local school superintendents, I haven't met a scofflaw yet. Those people are concerned about it. They have to live in that environment, and they have in many cases worked very hard to encase the asbestos or to have it removed. In many cases it has already been encased or removed, and it is a question of meeting the deadlines as far as inspections are concerned and getting their own people trained so that they can properly inspect and continue that inspection, which in the long run, of course, will save them enormous amounts of money if they can have their own people in that school district inspect as opposed to bringing somebody in from Cleveland or Columbus. That is part of the equation as well.

So I have not, in my own personal experience, witnessed situations where school districts are dragging their heels on the very es-

sence of the program, and that is removal or encasement. Most of the problem has been on meeting the financial requirements of inspection and training the inspectors.

Senator LAUTENBERG. Jim, do you have any comments?

Mr. FLORIO. I guess my only observation would be that if in fact there is to be a waiver process in extraordinary circumstances, one of the variables in the criteria that should be evaluated is the gravity of the problem. Across the board extensions for a year, two years, or whatever it is that is being advocated, doesn't take into account the good faith effort of the school board, and it doesn't take into account the immanency of the hazard that may exist.

I would feel comfortable in terms of talking about extensions only if you do have this certification process, and we spell out in the legislation what the variables would be, again, good faith effort, availability of inspection personnel, as well as a public health component. Certainly we don't want to treat equally a waiver for a facility that has minimal friable asbestos down in the boiler room as opposed to it being in the gymnasium.

I think those are the types of things that make some sense. We certainly don't want to be reinforcing foot-dragging conduct as a result of across the board extensions. We all know that all of our school districts around the country are having financial problems as a result of a whole host of things. But accepting that as a fact, the reason for AHERA was due to the perception and the reality that there were 15 million school children at risk in schools around the country where asbestos is friable.

So I think if we are going to take this step, what is being offered as a compromise, it should be the last resort, and we ought to keep the pressure on to develop the capability of complying with the law through the pressures that are designed to bring about more inspection and training facilities. As my colleagues urge, that should have been done two years ago. But, nevertheless, we are where we are.

Mr. FIELDS. Mr. Chairman, if I could ask one question of the Senator on this waiver that people are talking about. Who is going to rule on a waiver in 1,065 public school districts in Texas and 900 private schools in Texas? If it is going to be an automatic or a blanket waiver, what is the difference between that and extending it one year?

You don't have a cost necessarily associated with the extension of one year, but you are going to have a cost with somebody evaluating 1,065 public school districts and 900 private schools.

If we could do it, I would like to see that happen what Jim is proposing. But as I pointed out, one of our real problems in Texas now is just not having the personnel, within EPA either. This may go to the heart of some of the questions you are going to be asking, Senator, and we definitely don't have the people within the Texas Department of Health to go and make the inspections and the evaluations that I think would be called for if we are going to go into some type of waiver approval program.

Senator LAUTENBERG. You turned the questioner into the questioned. We are interested in the same result, but I would say this. Listening to Congressman Florio's comments which are always very direct to the subject, I would have to guess that there is suffi-

cient information around the school districts to have a data base that tells you how long ago the asbestos was put in there. There is a time permutation that can be developed at least to suggest that maybe this is one of the early ones, this is one of the districts where they found faulty contractors or something like that. I mean, there ought to be information, specific to Jim Florio's point, about the gravity or the possibility of a problem ought to be attacked.

First, I think that it is an excellent point, Jim. I don't think that we ought to simply say, okay, it's complicated and it's expensive, and therefore we ought to move off of this commitment to protect the health of the students and the people working there.

Mr. FLORIO. Senator, I would just observe that an unconditional extension reinforces all the worst things. There is no reason for me to believe that a year from now there is going to be more school money available. I suspect there will probably be less. We are relieving the pressure to utilize the market forces to develop contractors because you are sending out all the wrong signals.

So I am not sure that an unconditional extension doesn't send out the wrong messages, and one year beyond the current deadline we will be back here in the same position.

Senator REID. Mr. Chairman, if I could just make one comment. I've reviewed the testimony that will be given during the hearing, and, because I came from another hearing, I don't know if there has been any mention of this. In the testimony from one of the panelist that is going to appear today, there is talk about the fact that there is no more danger from asbestos inside and outside buildings basically, and there is a list of experts who say maybe we shouldn't be approaching this so rapidly.

For example, there is a study that just came out that indicates that there are thousands of public buildings that have asbestos insulation. How do we know, and have we addressed, in this legislation, the fact that maybe this asbestos is not as dangerous in buildings as it is?

Mr. FLORIO. Senator, if I can respond to it, I make the distinction between the presence of asbestos and the studies that have been put forward distinguishing between asbestos and dangerous friable flaking asbestos.

Senator REID. You are making a distinction there?

Mr. FLORIO. No, no. EPA has made the distinction. I mean, this is not a particularly aggressive agency, but they came forward and said that there are 15 million school children at risk in schools with friable asbestos—in this recent study they came out with, 500,000 public buildings have dangerous asbestos. I think we are all up to the point of some degree of sophistication that we know that asbestos per se is not dangerous if appropriately encapsulated, if it is not out there leaking or out there flaking.

But what we are talking about, and the information that this Congress worked off of to have the AHERA legislation enacted into law, is not just asbestos in general. It is asbestos that constitutes an imminent and substantial hazard to people's health.

Senator REID. I think that's an important distinction. Sometimes we talk about it not being dangerous, and I think that's an important part of the record to be made today.

Senator BAUCUS. Any more questions?

[No response.]

Senator BAUCUS. Thank you all very much. It has been very helpful. We appreciate it. We appreciate the time you have taken to come over and join us.

We have a statement from Senator Warner and, without objection, it will be made part of the record.

[Senator Warner's statement follows:]

OPENING STATEMENT OF HON. JOHN W. WARNER, U.S. SENATOR FROM THE STATE OF VIRGINIA

Mr. Chairman, I first want to compliment EPA for completing the report on asbestos in public buildings. This report contains useful information about asbestos that for the first time provides Congress with a reasonable assessment of how serious asbestos is throughout Federal and commercial buildings in our Nation. I will take a close look at this report and pay close attention to the many buildings for which the General Services Administration [GSA] has responsibility.

As you know many of these buildings that are home for thousands of Federal workers during work hours are of special interest to me. I want to be sure that they are safe and free from asbestos, and if they are not to determine and then undertake appropriate remedial action.

Mr. Chairman, I continue to be very concerned about asbestos in our Nation's schools, and I am equally concerned about the work that schools are required to do to comply with the requirements established in the Asbestos Hazard Emergency Response Act of 1986 [AHERA]. I feel strongly that adjustments need to be made to AHERA, from the experiences gained by those involved with the program. One needed change is to provide additional time to schools for them to develop needed management plans within adequate time-frames and with professional consultation.

This extension, embodied in S. 2024, introduced by Subcommittee Chairman Baucus and cosponsored by me, should not be construed by the public as indication that Congress is pulling back efforts to address asbestos in schools. Rather, this action underscores the will of the Congress to make reasonable and needed adjustments to a law to make it stronger, more fiscally sound and more effective. I want schools to develop their abatement plans the right way the first time and not in a rushed manner that would require them to be done over at an additional expense.

I will submit questions for the record, and again I thank the chair for scheduling this most important hearing.

Senator BAUCUS. Our next witness is Dr. John Moore from the Office of Pesticide and Toxic Substances of the EPA.

Dr. Moore, we are very happy to have you here. You have become an old hand here too, the number of times you've come before our committee. Why don't you proceed, I'm sure we will all have questions at the conclusion of your statement.

STATEMENT OF JOHN A. MOORE, ASSISTANT ADMINISTRATOR, OFFICE OF PESTICIDES AND TOXIC SUBSTANCES, ENVIRONMENTAL PROTECTION AGENCY

Dr. MOORE. Senator, I have a rather lengthy statement that has been prepared, and I ask that it be entered into the record and I'll just summarize a few comments.

Senator BAUCUS. Without objection.

Mr. MOORE. I would like to address my comments to two areas: the AHERA statute as it relates to the issue of inspections at schools, and the public buildings report that we recently submitted to Congress.

As this committee is aware, the AHERA legislation that was passed almost two years ago did have a series of rather aggressive

time lines affecting both EPA and, as you have heard this morning and will continue to hear, school districts.

The major targets to this point have been met on time, and the two targets that are now the focus of our attention are first, that by October 12th of this year each school district must have inspected its schools using competent inspectors and developed a management plan in the event that they have found asbestos in some or all of their buildings.

The second deadline is July 1989 when school districts must begin implementing the management plan that they are developing.

I want to focus on the fact that the October deadline is strictly a deadline by which school districts must have inspected. Nothing else is required other than that they have inspected and have used competent people to conduct that inspection and have developed a plan. But they have no obligation to implement that plan until July of next year.

So the operative outcome of an inspection where asbestos is found is really the July of 1989 deadline, as opposed to the October of this year deadline. I presume the reason for the distinction between the two dates was the fact that States would have an opportunity to review these plans for adequacy prior to their implementation. The October to July time frame would allow a period for that to occur.

The activities that are relevant to whether or not this October date can be met clearly orient around the availability of certified or qualified individuals. We clearly have a supply/demand situation. Do we have enough people available to do what is required by the deadline?

EPA or the Administration has no official position, and I doubt if it will develop an official position as to whether or not the October 12th deadline is the right date or is the wrong date.

There have been a variety of activities that are very relevant to this, however. One, EPA has promulgated a model accreditation plan that has been available to the States for a number of months. We also have reviewed and approved some 40 odd accreditation courses for people to inspect and to come up with plans. We have also distributed $1.1 million to 17 States to allow them to set up programs to do what is required by October.

Our estimate is that from the EPA-approved or associated training programs that have been in place for many years—and I might point out were put in place prior to AHERA ever having been passed—we estimate that about 5,000 people have gone through those courses and are competent to inspect buildings, for example. We also estimate that roughly 2,000 are graduating each and every month on top of that figure. So we estimate that at the end of this month, we would have that number up to about 9,000 inspectors nationwide.

We estimate, based on the mailing addresses of the people who have been in those courses, that approximately 30 percent of the graduates or the people who have attended these courses work for school districts; about 70 percent are private individuals.

Assuming that those 30 percent who work for school districts are going to focus their activity solely on schools and assuming that

roughly 25 percent of the other people will spend 25 percent of their time working on schools, we would say that there would be enough inspectors to meet the goal of October 12th.

However, mere numerics is not the only way to address this issue. There are a variety of factors that I think also need to be considered, some of which you have already heard.

First of all, the geographic distribution of these graduates obviously makes a difference. Are the graduates perfectly situated where the majority of the school districts are that need to be done? Our early indications are that no, it is not a perfect match by any stretch of the imagination.

As you have heard, some State structures or State legislative sessions might be out of phase with the deadlines. Some of the schools' budget cycles may well be out of phase with these requirements. On the last point, EPA has distributed $5 million to assist States in conducting these inspections, and we estimate an additional $12 million will be announced by April 1st.

The other requirement of AHERA was that EPA conduct a study and submit the results to Congress dealing with the human health implications of asbestos in public and commercial buildings. The report was recently submitted to Congress along with four recommendations. Clearly the report confirmed something that we already knew: that indeed some of these public and commercial buildings do have asbestos in them. Our estimate is that roughly one out of five buildings contains friable asbestos.

That comes to about 730,000 buildings out of the universe of 3.5 million public and commercial buildings that we looked at. Of this number, some 66 percent, or roughly a half million buildings, have some deteriorated or damaged asbestos somewhere in the building.

The mere presence of asbestos in a building does not pose a risk to the occupants of that building. Indeed, whether or not there is a risk associated with the presence of asbestos clearly has to do with whether or not it is deteriorating and whether or not it is getting into the air so that it is inhaled by the people who frequent the building. So exposure becomes the key criterion, I think, as one looks at asbestos in buildings.

We outlined in our report four factors that we think are major with respect to inhalation or exposure to asbestos in the air. One is the presence of the material, in what amounts and where it is to be found. We estimated, for example, that in these public and commercial buildings, one-fifth have asbestos-containing material. That's in contrast, for example, to one-third of the schools in this country that we estimate contain asbestos material.

We also determined that a significant amount of the material in the public and commercial buildings might be associated with thermal system insulation, as opposed to troweled-on material.

The condition of the material clearly is critical. Location is important.

We basically have tried to look at buildings in two ways: those portions of a building to which the public has general access, and those portions of the building that usually are denied to the general public but may be heavily frequented by service employees associated with that building.

Lastly, we looked at air concentrations. In one of the studies buildings with friable asbestos some of which was damaged, we found that the air samplings taken from those buildings didn't seem to be much higher, if higher at all, than the ambient levels that were found outside those buildings. This, of course, does not necessarily account for the possibly episodic nature by which this damaged asbestos may be released to the air. It may well reflect the fact that at the time the material was sampled there was little action around that damaged material.

In summary, with respect to asbestos in public and commercial buildings, we make two major observations. First, thermal system insulation may be the major factor of exposure in greater proportion here than in other types of buildings we have looked at. Second, service workers may be at greater risk because of the type of insulation that is damaged and the parts of the buildings which they frequent.

We did not recommend that an AHERA-type approach be instituted for public and commercial buildings at this time.

I might also point out, Senator, that regulations are not the only tool, or necessarily the preferred tool, in all instances to address a problem such as asbestos in buildings. Outreach may well be a more important factor.

Three of the reasons that we did not recommend an AHERA-type approach for public and commercial buildings was first, whether we have an adequate infrastructure available to realize that goal. Do we have adequate numbers of people to inspect, to come up with plans, to train workers for abatement or removal of materials?

Second, as you have already heard, is the concern about whether or not adequate resources currently are available for schools. We think we should do nothing to deter us from the prime focus of asbestos remaining in school-buildings because of the likelihood that school children could be at greater risk. This is because if they were exposed earlier in their lives, they would have a longer life expectancy in which to express an adverse outcome.

Third, we estimate that the school program is somewhere around a $3 billion effort over the lifetime of the schools. If you translate that program into public and commercial buildings, just because of the sheer scale of the number of buildings, the cost would be a $50 or $60 billion over the lifespan of those buildings.

We think that it would be prudent to have an objective analysis of all the things underway under the schools program, to determine the return on investment, before we try to extrapolate it to such a large universe.

We have four recommendations in that regard. We think we should enhance the Nation's technical capability. This involves further enhancing inspection capabilities, further training of planners or abatement workers, and also being more aggressive in getting this information into the hands of the people that need it.

We also strongly feel that we should focus our initial effort on thermal system insulation. This is material that we found was damaged. It poses a particularly high risk to the service employees in these buildings, and it is easily repaired. It can be repaired with a modest amount of technological knowledge, and the costs that

are associated with this type of repair are relatively modest as well.

Fourth, we think we can do a much better job in this country and in EPA of trying to improve the integration of the various asbestos-related activities that are underway. With this in mind, we probably could get a better return for the amount of money that is being invested already.

Finally, we need to objectively assess whether the of activities that have been introduced over the last couple of years are working and are delivering the results that we expected at the time they were put together.

One of the areas, for example, that we shouldn't lose sight of is the result of air sampling of buildings with damaged asbestos. We could not find elevated levels of asbestos in the air compared to the ambient air levels outside. This finding needs to be explored further to make sure we understand its significance. What are the factors that led to those findings.

In summary, I think we need to be careful not to mix the two issues. This is a period when strong demands are being made on school districts to inspect their schools, to determined if asbestos is present, and to come up with appropriate management plans. We need to make sure that nothing detracts from that priority—that that program has a chance to succeed.

In trying to determine what to do for commercial and public buildings, we should always keep foremost in our minds that we should keep schools our priority effort with respect to asbestos in buildings, at least for the next several years.

Thank you.

Senator LAUTENBERG. Thank you very much, Mr. Moore.

We have been joined by Senator Stafford, the ranking member of the Environment Committee. Before we get to questions, I would ask Senator Stafford if he has a statement he would like to make. If not, we would be pleased to defer any questioning to Senator Stafford if he so desires.

OPENING STATEMENT OF HON. ROBERT T. STAFFORD, U.S. SENATOR FROM THE STATE OF VERMONT

Senator STAFFORD. Thank you very much, Mr. Chairman. I regret that I wasn't here when the hearing started. I was in front of the Finance Committee on an educational matter.

I do have an opening statement, but in view of the time, I would ask unanimous consent that it appear in the record at an appropriate place, and I will defer questions until my turn.

Senator LAUTENBERG. Without objection.

[Senator Stafford's statement follows:]

OPENING STATEMENT OF HON. ROBERT T. STAFFORD, U.S. SENATOR FROM THE STATE OF VERMONT

I want to commend the chairmen and ranking members of the subcommittees that scheduled this morning's hearing. I do not need to tell anyone in this room that asbestos is a problem that continues to plague us. And I believe that our inquiry today will help identify what is and what is not the nature of the problem.

When the Asbestos Hazard Emergency Response Act of 1986 was enacted, many of us believed that we had tackled the first part of a pervasive hazard: asbestos-containing materials in buildings. By requiring asbestos identification and abatement

in the schools in this nation, the Congress intended to minimize risks to children and to those who work in school buildings. We left until another day the question of what should be required in the 733,000 nonschool public buildings that contain asbestos.

The AHERA law established a tough, but I believe realistic, schedule for schools to address a difficult problem. Many are not saying that the schedule is too tough and that adjustments must be made. That is one of the reasons we are here today.

I intend to listen carefully to the witnesses, with the hope that we will be given a clear picture of what can be accomplished and whether any adjustments to schedules are needed. The task facing the school systems is a difficult one. But delay is not necessarily going to make the job any easier.

For example, officials in Vermont have informed me that they can get the job done on time, but would probably be tempted to take advantage of any delays that are granted. Such delays are not in the public interest.

The second reason for the hearing is to have EPA present the results of the building study which was required by AHERA. It is my understanding that this presentation will open for further consideration by Senator Baucus's subcommittee the question of what Federal action may be needed to address asbestos in nonschool buildings.

I look forward to this opening discussion and to future meetings on this important question.

Senator LAUTENBERG. Senator Reid, do you have any questions?

Senator REID. No questions.

Senator LAUTENBERG. Mr. Moor, you heard the testimony of the congressional members who were here, and you know what we are trying to accomplish. I certainly don't think that you are trying to minimize the problem in any way when you posed the question similar to that which Congressman Florio raised about the gravity, to use his word, of the situation.

Again, I heard you say also that you would not, given your option, choose the route that we have taken to pursue this, the AHERA program. Did I understand you correctly?

Dr. MOORE. No sir. I think we support the goals and objectives of the AHERA program.

Senator LAUTENBERG. How about the deadline? You were very emphatic about the fact that October 1988 called, not for programmatic activity, but rather the completion of an inspection. That also assumes the production of a plan, of at least the outlines of a program that remediates. Is that sufficient time for the schools to be aware of what they have to do with sufficient numbers of adequately trained personnel to get on with the task of doing an evaluation of the condition of asbestos in school districts throughout the country?

Dr. MOORE. Senator, it certainly has been known for several years that there is a need for these schools to be inspected for the presence of asbestos. In that sense, I think there has been adequate time.

There also is no question that we also had some concerns at the time we promulgated the inspection regulations last October—I'll quote for a sentence that was in the preamble to that regulation: "Based on the comments that we have received, EPA is concerned about the ability of LEAs to complete and submit management plans by October 12th of 1988."

I think what we pointed out there is what I tried to highlight in my opening remarks. This is an awfully big country, and while we feel that we are training enough inspectors, I am not sure that the inspectors are necessarily all in the right place with respect to

where the schools are that need to be inspected. For example, of the 70 percent of the people who have been trained who are private citizens are opposed to those working for school districts, I don't have a good feel for what percent of their time they are going to devote to school business as opposed to other types of buildings. I don't think we have a good sense of that.

I think there are adequate numbers of people to do the job and meet the October deadline. I'm not sure they are all in the right place. I'm not sure that school districts because of their budgetary or administrative cycles necessarily are well postured in each and every instance. We are talking about tens of thousand of districts being able to address this is the time line being talked about.

Similarly, States are identified as having a very major role in AHERA implementation Indeed, some of these States for some of the same reasons may well not be in total phase with the deadlines that are set into the statute as far as October 12th is concerned.

I think far and away the vast majority of school districts should be able to meet the deadline: I'm not going to say with ease—it may require some degree of rigor—but without having to resort to heroic measures.

The quandary that Congress would fact or anybody would face, is: What do you do with the vast majority of school districts that probably will be in compliance by October 12th if indeed you just arbitrarily extend everybody else? There is no simple answer to that question.

There were comments made about the penalty policy. Well, the Tosca penalty policy says that the maximum penalty could be up to $5,000 per day.

Senator LAUTENBERG. Could be.

Dr. MOORE. Could be. That's the maximum. If one wanted to look at the area, perhaps one could give some guidance to EPA. If you are thinking along that line, for instance, I think we would more likely be inclined to have our policy be that we would fine $5,000 per building or per school district—per event as opposed to per day. But we have not fully worked out our enforcement strategy.

We also shouldn't lose sight of the fact that the money that would be generated or realized from any penalties of that sort do not just accrue to the Federal treasury. By the statute's language they are set aside for the use of that school district in implementing its required maintenance plan. Only if the penalty is in excess of what is needed for the maintenance plan does it then leave the school district. In that instance it goes into a separate fund which is also available for asbestos in buildings in a general sense, rather than going to the general treasury.

Senator LAUTENBERG. Is there a manner or an opportunity to do some modeling to try to determine the process by which the asbestos was put into various of the buildings; and the age? Does it matter whether it is 20 years, or 25, or 50 years old, so that we can approach this thing on some kind of a priority basis and try at least to guarantee that the most dangerous of situations is reviewed?

Dr. MOORE. Of course, the counter to that, Senator, is that you don't know where the most dangerous areas are until you have

done the inspection. Of course, that's what you are seeking relief from.

Senator LAUTENBERG. Is the inspection then, in your judgment, a fairly expedient process? Is it one that a trained person can do in hours? Does it take days?

Dr. MOORE. It obviously depends on the size of the building and everything else, but assuming a typical building it is my estimate that we are talking about hours, a day, at most two days. We are not talking about a week or two weeks to inspect a building for the presence of asbestos.

Senator LAUTENBERG. With some 5,000 out there divided 30/70, 5,000 trained inspectors, I understand, 30 percent in public employment, 70 percent in private, 2,000 per month being trained, 9,000 at the end of March or at the end of April, did you say out there, quite a bit could be accomplished by that October date.

Dr. MOORE. Yes, sir.

Senator LAUTENBERG. Is there any reason, in your judgment, to simply extend the deadline now by a year or whatever period of time we select, it obviously won't be less than a year, or should we continue to pursue this and then try to find some kind of a basis for granting exemptions where realistically necessary?

Dr. MOORE. Sir, I have a personal view.

Senator LAUTENBERG. Well, you are here professionally. So whatever you say, personal or otherwise, is going to be the voice of EPA.

Dr. MOORE. My personal view is that if one is thinking of moving beyond the October date—and I think it should not be done lightly if one moves at all—that one might want to focus on that July of 1989 date. That's where the results of the inspection are going to have any utility anyway, by law.

The other thing I would suggest is, if you didn't move the date, to possibly look towards the time when EPA does inspections to find out whether or not schools have complied with the law. In coming up with an assessment of penalties or something like that, one might look at a series of factors such as the school district which has done nothing in any of its buildings, and there is no evidence that they tried, as opposed to those school districts that did some buildings but might not have done them right, or didn't have money, or other tangible things in the way. Those could be factors that, using enforcement discretion, one could take into account and then decide what the appropriate penalty would be.

That is a more likely approach, to my way of thinking, than to just give a blanket extension. Not because they are school districts—this would apply to anything that we might talk about—I would predict that when you give a blanket extension for "x" months or years, that when the next deadline starts to approach, you will still have that small subset of people who have waited until the last minute and will be in the same circumstance they will find themselves in this year.

Senator LAUTENBERG. Just some quick specifics here. How about the resources—funds, staff—to meet the needs of the States that need help? How many people do you have working on the AHERA program here in Washington and in the regional offices?

Dr. MOORE. Our headquarters staff dealing with asbestos in buildings, more specifically in AHERA, is relatively modest. We

are talking about 12 to 15 people. It's in that range as opposed to dozens and dozens of people. The number of people we have out in the regions I think is somewhere in the range of 100 to 120, counting those that we pick up through our grants program with the American Association of Retired People.

They aren't the critical resource at this moment with respect to the inspection date. Their work to some degree has been done, in getting the regulation out and getting the information out. They now are focusing on the loan and grants program under ASHAA, and they won't come back into heavy play until after some of these deadlines are realized by the calendar.

Senator LAUTENBERG. What kind of additional assistance could you give to help the schools meet these deadlines if you had more staff? What kind of things might you be able to do to expedite the process?

Dr. MOORE. Well, I think the main thing that is probably needed right now is to enhance the outreach with respect to the number of people being trained per unit time to be able to do these inspections or to come up with the management plans. I would probably focus more heavily right now on the management plan aspect of it rather than the inspector part. I think we are getting enough inspectors per month to add to the 5,000 we already have.

We probably need to be giving much more guidance to the States and to the school districts and to the individuals who have to do the work—what are the proper elements that should be thought of when you are developing this plan if you found asbestos in your building? I think we could possibly do more as far as having a larger presence throughout the country in that area.

Senator LAUTENBERG. Have you asked OMB for additional staffing?

Dr. MOORE. Not outside of the normal budgetary process. What I just described, for example, also comports with the recommendations that came out of that public building survey—this broader outreach approach. Unfortunately, that report was also out of phase with the traditional budget-making process. We do have some modest funds in the 1989 budget that we have committed to trying to cut into those areas of need.

Senator LAUTENBERG. I want to turn to my colleagues, Mr. Moore. The large question that is raised and the one that I hear expressed by people from the States is that EPA hasn't been as aggressive with their help or with their direction as they might have been. Now the regulations have been out there for some time, that we know. We will be looking as we go further to hear from other witnesses for their views, and of course reserve the right to get back to you and ask you to respond to specific questions that they raise.

Senator Stafford?

Senator STAFFORD. Thank you, Mr. Chairman.

I regret, Mr. Moore, that I wasn't here to hear your presentation, but I do have one or two questions. One is this: can you describe what you believe is the nature and extent of your discretion in enforcing the deadlines contained in AHERA against school districts, if you feel you have some discretion?

Dr. MOORE. I think the way the statute reads there is no question that, come October 12th, inspections directed by the statute must have been performed. If we were to visit a school district and find that such an inspection had not been performed or had been performed improperly, we then would be in the position of assessing a penalty.

It is in the assessment of that penalty where I think we have a fair degree of discretion. We would try to come up with an objective set of criteria that we would apply to all of those circumstances as we met them, rather than try to come up with that plan on a case-by-case basis.

So I do think there would be a fair amount of discretion as to whether the penalty is per event, whether it is per school district, whether it is per school, whether it is per building within a school. We would look at: good faith evidence, have they been fined in the past for not having inspected a school, or inspected improperly under the old asbestos in schools regulation that has been preempted by AHERA? I think we would certainly consider all of these factors.

Senator STAFFORD. Other than enforcement discretion, what action short of a blanket extension could be implemented by EPA to grant extensions only where good faith efforts to comply have been made?

Dr. MOORE. Senator, I think that is a difficult area. There was discussion earlier from the three congressmen expressing their points of view as to the possibility of an EPA certification that somebody couldn't meet the deadline. Well, in essence, what one has done is traded, if you will, one big personnel drain for another big personnel drain. If we had to be in a position in a period of a few weeks of having to process thousands and thousands of waiver requests from school districts, I doubt if we have the manpower to do it. I also am not sure that is the most profitable investment of that manpower, as opposed to other aspects of asbestos in buildings where it could also be invested.

Senator STAFFORD. Thank you. Why is it necessary to wait 3 years before requiring that public buildings other than schools be, at the least, inspected for asbestos and workers and occupants notified?

Dr. MOORE. Senator, in coming up with that recommendation we were cognizant of the fact that a lot of activity was already underway with respect to public and commercial buildings. It's not like we are starting from ground zero as a country with those buildings.

We were also cognizant of the fact that a lot of the outreach activity and the technical material and the training courses that we have fostered around this country, while stimulated initially to be responsive to the needs of schools, probably have about a 90 or a 95 percent payoff to other buildings beyond schools.

It is with this knowledge and background that we suggested that one could possibly wait a modest period of time. We arbitrarily suggested three years. I'm not sure if that's any better than two or four years, but some modest period of time is appropriate so that we also could gain experience with the AHERA-type regulations we are talking about this morning.

We have a variety of things—trained inspectors, a competent person to come up with the plan, obviously a requirement on the part of school districts to be in compliance with their plan. I think we need some experience to find out whether or not those things that sound so good and seem to make sense as we sit here today indeed are delivering the value that we think should be derived from them before we try to apply then I won't say blindly, but without that experience to a much, much larger universe of buildings.

Senator STAFFORD. One final question, Dr. Moore. You have said that the risk to service workers should be considered separately from risks to other building occupants. You note that more effective implementations of ASHAA and other rules could improve worker protection. Could you elaborate on what should be done to make these rules more effective?

Dr. MOORE. Senator, the basis for that recommendation was that we found thermal system insulation in a state of some disrepair in these public and commercial buildings. That type of insulation is typically found in the nonpublic segments of the building that are frequented by these types of employees. With that in mind, we suggest that area as one focus on trying to get better outreach and repair.

Under the ASHAA Act we did extend the ASHAA requirements for most workers in this country to public workers that aren't covered under the ASHAA act as it related to abatement of asbestos material. We now hope by the end of the year that we will have extended those same requirements for workers to cover service employees, in schools as well as in buildings in general.

Senator STAFFORD. Thank you.

Thank you, Mr. Chairman.

Senator LAUTENBERG. Thank you very much, Senator Stafford.

Senator Reid?

Senator REID. Thank you, Senator Lautenberg.

We have heard that it would cost over $50 billion to clean up the public buildings. What is being done, if anything, by the EPA to develop lower cost airborne monitoring methods than the present methods that we use?

Dr. MOORE. Senator, we have a relatively modest amount of work being done in the air monitoring area. It is an area that we think fits under that fourth recommendation in our public and commercial buildings report.

A lot of people have asked us——

Senator REID. Talk about that more than the fourth recommendation, how it fits into this.

Mr. MOORE. A segment of interested people have maintained in the past and continue to maintain that indeed it would be preferred to come up with an airborne standard—that if you sample and you are below this magic number, everything is fine, and if you are above that number you then have to do things.

Well, it does have intuitive appeal as you first think of it. Unfortunately, we don't think that there is adequate data to allow us to be able to use that type of a yes/no dichotomous decisionmaking process. That's why we are taking the trained inspector approach.

Senator REID. What are we doing to develop better methods then? You said there aren't sufficient methods or standards. What can we do to develop better or different standards?

Dr. MOORE. Senator, There are tremendous costs that are associated with having to abate a building based on the presence of deteriorated asbestos. If indeed there is evidence that you aren't getting increased airborne levels, in those buildings, the need to abate in such a heroic manner may not be appropriate in each and every circumstance.

Because of that, we think work should be done to design the appropriate studies to find out the true significance of our finding of low air levels in some of these buildings with deteriorated asbestos.

Senator REID. Who should do this work?

Mr. MOORE. Since you are talking about public and commercial buildings, most of which are in the private sector as opposed to the Federal sector, we think there should be a lot of appeal to having private funds conduct such studies. The private sector would be the obvious beneficiary of the result if indeed the result suggested that the risk would be less than one would theoretically anticipate.

Obviously there would have to be a Federal participation, at least in the sense that nobody in the private sector would be willing to design and go to the expense of conducting a study unless they had some reasonable assurance from the regulators in this country that the data would influence the regulatory approaches that would be taken in the future. That's what we have recommended in the report to Congress: that an interaction between the public and private sectors for these types of studies may be appropriate.

Senator REID. It would seem to me, based on the little bit that we know, for example Senator Lautenberg talked about one of his friends, that the real terror that asbestos can bring to a person's life, and we are talking now about—putting the schools aside, in which we know there are tremendous amounts of asbestos that need to be removed from the schools even yet—but now we are talking about public buildings, some $51 billion. It seems to me that this is something that the Federal Government should be involved in because I think it is only wishful thinking to think that the private sector is going to develop some magical means to monitor, remove, or somehow change the method of operation of removal of asbestos.

When we have something that is so huge that is facing this country, I think that the government should be involved in it. Should the lead agency be the EPA? Let's assume the Federal Government should be involved. Shouldn't the lead agency be the EPA?

Dr. MOORE. Yes, sir. I'd have no problem with that.

Senator REID. It would seem to me that your agency should come up with some figures for us to determine how much research should be done. Basically there is no research being done now—that's a fair statement—to develop lower cost airborne monitoring methods, and generally a different approach to this. If something is going to cost $50 billion, it seems like this government should be spending $1,000, $10,000, $1 million, something, to look at this, and I would think that your agency should be giving us some alternatives, saying that we don't know if there are alternate methods

that should be used, but we feel that we should devote research to this.

Mr. Chairman, let me just say this. We are going to have a vote in just a minute, and I've been here most all the day as we all have, and on the next panel, one of our stars from Nevada is going to be testifying, and I'm not going to be able to be here because of some other hearings. I, out of order, would like to welcome Ann Lynch to our committee and tell her that I have already reviewed her testimony, and it is as good as everything else she does.

Senator LAUTENBERG. That's appropriately noted in the record, Senator. I would have been surprised if someone arriving from Nevada wasn't a star. That's been the history of the Capitol here. So we welcome Ms. Lynch as well.

Mr. Moore, thanks very much. There is a whole series of things we would love to discuss with you. Unfortunately—fortunately for you—the time isn't there to do it, but we may submit further questions in writing. We will hold the record open for a while. We would ask for your usual cooperation in getting the answers back to us as quickly as you can. Thank you once again.

Dr. MOORE. Senator, if in your wisdom of looking towards working on different dates for compliance or trying to reach a decision as to whether different dates would be appropriate, we are certainly more than willing to work with you to try to point out some practical considerations associated with various approaches that you may be considering in that regard.

Senator LAUTENBERG. Thank you.

We would ask the next panel to come up. It includes Rosilyn Schleife, Mr. Guttman, Ms. Lynch, Mr. August, and Mr. Anderson.

We welcome all the witnesses. Since we don't have a panelist from New Jersey, one of our stars, you get to go first, Ms. Lynch, in deference to our distinguished colleague who has done so much with the environment and whose contribution is so valuable, not only to this committee, but to the Senate generally.

He asked the courtesy, Ms. Lynch, if you would present your testimony first.

I caution all of the witnesses, unfortunately we've got a fairly large day ahead of us, and if you could confine your testimony to 5 minutes, we will take your written testimony in full for the record.

Ms. Lynch, welcome.

STATEMENT OF ANN LYNCH, FIRST VICE PRESIDENT, NATIONAL PARENT-TEACHERS ASSOCIATION, LAS VEGAS, NV

Ms. LYNCH. Thank you, Mr. Chairman, and Senator Reid. I want you to know that I am a star, and I have to get back for the late show this evening. I will be brief.

I am Ann Lynch, and I am the First Vice President of the National PTA. I reside in Las Vegas.

Senator LAUTENBERG. Could you bring that mike a little closer, Ms. Lynch, so we can hear you better.

Ms. LYNCH. Sure. I'm a little short in the situation here. I was very tall until I went into volunteer work, and I am now very short. It kind of ground me down.

I'm here on behalf of the National PTA. We thank you very much for the opportunity to address you this morning with our continuing concern about asbestos in schools.

The National PTA is opposed to extending the AHERA deadlines for inspecting the schools and developing management plans and for the implementation of the management plans. Millions of children are being exposed to potential health threatening and life threatening conditions in the school where asbestos fibers are present. We cannot wait any longer.

For the last 17 years the National PTA, along with the environmental and health communities, have been aware that asbestos is a very dangerous, life-threatening fiber which is now existent in thousands of schools across the country.

I've heard a lot of testimony today concerning the cost of asbestos abatement and the process surrounding that activity I'm afraid that we are now beginning to focus on the process and not on the children. It appears that we will soon have very educated people who will be dying of lung cancer within the next 30 or 40 years.

It is very difficult for us to put a price tag on a child's life, and I understand that school districts and school boards have problems with money because the PTA traditionally has been a strong proponent of increasing funding to all public education.

But there has been enough time. School districts across this country could have voluntarily, under the EPA Technical Assistance Program taken care of the asbestos problem as early as 1979. Now to say we haven't enough time is not acceptable to us.

There are too many children who are out there waiting for us to do something drastic. To extend this deadline would do nothing more than to allow us to have one more year where children and teachers are in an environment which is at risk.

I think part of the problem is that the danger of asbestos is not readily available to be seen. Children don't just keel over in the playground. It's not until 15 to 40 years later, and then we look back and say, that's a shame.

When you figure in the health care cost to this country in the next 30 or 40 years because of asbestos in our schools, I think the amount of money now is better spent by prevention rather than in trying to clean up a problem that we knew existed down the road.

I would hate to think that school district breathing time will be at the expense of children and teachers' breathing time. That extra year only extends everything one more year.

The actual cleanup will not begin until 1989, we are only focusing on the inspection and the management plan, and there certainly has been sufficient time to handle this situation.

National PTA has long worked with Congress to call to the attention of local school districts, local school boards, and to the Nation at large the risk our children have.

The National PTA is opposed to extending the AHERA deadlines. By extending the deadlines, Congress will be sending a message to school districts that it is acceptable to continue to ignore or delay action on this serious health issue.

It is not time for foot dragging, but it is time for increased activity. Congress, States, school districts and parents must maintain

their commitment to helping make the Nation's schools as healthful for children's bodies as they are for children's minds.

I appreciate the opportunity for the 6.1 million members of the National PTA to express to you their immediate and serious concern about the health crisis that faces our children in school every day, and I don't think this country should allow that to continue any longer.

Senator LAUTENBERG. Thank you very much, Ms. Lynch.

Next let's hear from Reuben Guttman.

STATEMENT OF REUBEN A. GUTTMAN, ESQUIRE, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO/CLC, WASHINGTON, DC

Mr. GUTTMAN. Thank you, Mr. Chairman.

My name is Reuben Guttman, and I am counsel to the Service Employees International Union. I would like to thank this committee for affording SEIU the opportunity to testify today. We represent 850,000 employees. We are the largest union representative of building service workers.

As the EPA and others have long recognized, it is the custodians who are the likely victims of the peak exposures that represent the primary source of hazard from asbestos in buildings. SEIU members include 175,000 janitors who work in schools and other public and commercial buildings and every day face actual or potential contact with friable or flaking asbestos.

First, I would like to address the question of whether resource limitations require a legislative extension of deadlines contained in AHERA.

To the extent that the proponents of an extension of the AHERA deadlines have legitimate concerns, these concerns were raised to Congress and provided for by Congress in the enactment of AHERA itself. Sections 15 U.S.C., section 2647(c) of AHERA and 15 U.S.C., section 2615(C) of the Toxic Substances Control Act provide that penalties for noncompliance are not to be arbitrarily imposed. It's all here.

EPA is mandated to consider factors, including resource limitations, that may legitimately prevent timely compliance. AHERA does not need revision; it needs congressional oversight to ensure that its administration is consistent with its own terms and the public interest. SEIU therefore vigorously opposes the legislation of an extension.

As a representative of those most likely to be endangered by faulty abatement, we too are concerned that haste may further poor abatement. This concern, however, has been provided for in a carefully crafted piece of legislation, which I believe was unanimously passed by this Congress.

In order to protect workers, and others, the task before Congress is not to rewrite AHERA, it is to ensure that EPA acts reasonably and consistently with AHERA's express terms to provide extensions when they are merited, but not when they are not.

SEIU therefore proposes congressional oversight directed at: (1) review of the agency's plans for enforcement of AHERA and agreements related to compliance deadlines; and (2) review of the activi-

ties of the EPA regions to ensure that the agency is doing all that it can to coordinate efforts within and among individual States so that the resources can be used wisely.

I would also like to address the public buildings study. In the case of schools, custodians have the good fortune to be exposed to a potential hazard that might imperil children. Thus they will benefit from protection.

In the case of other buildings, the EPA public buildings study unfortunately implies that the absence of any group, save custodians, in special need of protection, diminishes the urgency of the hazard. Thus, SEIU is extremely disappointed by EPA's public buildings study and the related decision not to proceed with rulemaking.

EPA's conclusion that rulemaking is not presently in order is in violation of the agency's obligations under the Toxic Substances Control Act. TSCA, Section 6, provides that EPA shall proceed with rulemaking where it finds unreasonable risk to be present. TSCA does not permit EPA to avoid its obligations by declaring, as EPA essentially has, that a problem is too big.

EPA's continued abdication of its regulatory responsibility is also a tragic contradiction. On the one hand, the agency says that it cannot now engage in rulemaking because limited resources will imperil the quality of abatement and because the cost of the program will be too large.

Meanwhile, EPA's public buildings study declares that AHERA rules provide the baseline for voluntary action in other buildings, and EPA's official guidance documents similarly counsel prudent building owners to take the very actions that the agency says it will be imprudent and too costly to require by regulation.

Moreover, in claiming that the asbestos in other buildings problem is too pervasive and complex to permit any rulemaking, EPA is refusing to proceed with even a minimal requirement that building owners inspect to determine the presence and location of asbestos.

While there may be a debate about whether AHERA rules should be immediately applied to other public and commercial buildings, there should be absolutely no question that until comprehensive rules are provided, workers and citizens have the simple right to know that hazard exists. In the absence of an inspection requirement, building workers and others will not even have the knowledge needed to avoid creating new hazard in the interim until comprehensive protection is provided.

Finally, in sum, EPA's continued failure to fulfill its commitment to comprehensive asbestos in buildings is just unacceptable. If, as EPA contends, presently available resources preclude the full-blown application of AHERA rules to other buildings, then (1) at the least an inspection rule is required to minimize interim exposure to hazard, and (2) a timetable for the application of abatement rules to those most endangered is required.

While my comments are more elaborately set forth in the text supplied to this committee, I would be more than happy to respond to questions.

Senator BAUCUS. I want to apologize to the panel. There is a vote in progress at the moment, and according to the time that has

passed since the last five bells rang, there is about 6 minutes left in which to vote. I therefore recess this hearing for about 10 minutes.

[Recess]

Senator BAUCUS. Let's resume the hearing.

The next witness will be James August with the American Federation of State, County, and Municipal Employees.

Mr. August?

STATEMENT OF JAMES AUGUST, OCCUPATIONAL HEALTH SPECIALIST, AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES

Mr. AUGUST. Thank you. I have submitted written testimony into the record, and so I'll summarize my remarks.

My name is James August, Occupational Health Specialist, from the American Federation of State, County and Municipal Employees. I am a Master of Public Health and an accredited building inspector.

AFSCME represents more than 1.4 million employees of State and local governments, school districts, public hospitals and nonprofit agencies who work in a cross-section of jobs in the public sector.

We have extensive experience with asbestos, including being a member of the Federal advisory committee which negotiated the Asbestos-Containing Materials in Schools Rule.

Based on that experience, AFSCME believes that, first, any blanket delay in implementation is unwarranted; and, two, EPA's Report to Congress on asbestos-containing materials in public buildings is flawed and fails to specify actions which will adequately protect the public's health from exposure to asbestos.

Congress chose to write strict time constraints into AHERA largely because of unsatisfactory compliance by schools under previous laws and the failure of EPA to issue stricter regulations.

We believe there are sufficient qualified personnel to comply with the mandated deadlines. EPA has just given testimony to that effect.

In addition, a substantial number of schools do not require an extensive or costly inspection or management plan because they were either built without asbestos, have already removed it, or have already conducted inspections which meet AHERA requirements.

If there are reasons that make adhering to AHERA difficult, they need to be identified and corrected. Additional efforts by EPA to link schools with asbestos professionals, to create more training centers, and to begin to allow preferential enrollment for school employees might be needed.

If individual schools can prove that, despite acting in good faith to adhere to the regulations, they are unable to do so, a case-by-case evaluation might be appropriate.

Our members are crying for help. We have been inundated with requests for more information and receive numerous accounts of asbestos exposure. I have included some of these accounts in my written testimony. In fact, some of them came from Ohio, and I wish Representative Oxley could hear what is happening to our members in his State.

As to the report that Congress wrote, it was required by EPA to study the problem of asbestos in public and commercial buildings. However, virtually all of the data upon which EPA based its recommendations were taken from a survey of buildings conducted in 1983 and 1984. The only new information is from air sampling from a small number of buildings, and quite frankly we are disturbed that air sampling is even in this discussion because it is not the way to go.

The choice of including air sampling in the study is a mysterious one. EPA has long held, and we fully concur, that it is not a sufficient or even relevant method for assessing the condition of or potential hazard of asbestos. According to EPA, air sampling is only justified during abatement projects to ensure that asbestos fibers are being contained and following the work to ensure that the area has been decontaminated and is safe for re-entry.

If anything, the report probably understates the problem with asbestos. The condition of asbestos which was visually examined nearly five years ago has most likely further deteriorated.

In addition, State and local government buildings were not included in the survey, and from our experience, it can only lead us to believe that the situation in those buildings is probably even more serious.

Existing asbestos regulations do little to protect workers and are almost worthless in protecting the health of building occupants.

For example, in one building I inspected sprayed-on asbestos covered the basement ceiling. However, the asbestos was so badly deteriorated that substantial material had been dislodged from the ceiling and was strewn about the floor in broken chunks and dust.

An AFSCME member had been going about his daily routines of sweeping the floor with a broom which was spreading visible concentrations of asbestos fibers into the air for all building occupants to breathe.

In addition, the basement area was used for parking. So the fibers were further disturbed by the motion of automobiles and the garage door.

The municipality involved had inspected the building years ago, but insisted there was no problem because air sampling revealed that they were below the OSHA level.

This tragic situation is allowed to exist, contaminating not only custodial personnel and building occupants, but also the general public who may have business in the building. There is absolutely nothing in any existing law that can force the city to deal with this problem.

Not only should AHERA be implemented without delay, but that model needs to be applied with realistic timetables to other public buildings.

Thank you.

Senator BAUCUS. Thank you, Mr. August.

Next, Rosilyn Schleife.

STATEMENT OF ROSILYN SCHLEIFE, NATIONAL EDUCATION ASSOCIATION

Ms. SCHLEIFE. Mr. Chairman, and to the members of your committee, we have also submitted additional written testimony.

I am Rosilyn Schleife, a physical education teacher in Lake Holcombe, Wisconsin, and also a member of the NEA Executive Committee with the 1.9 million member National Education Association. I appreciate this opportunity to talk to you about asbestos hazards in America's schools.

There is a long and appalling record of avoidance and delays related to the problem of asbestos hazards. Nearly 40 years have passed between the time asbestos exposure was linked to life-threatening diseases and the time that Congress enacted prohibitions against its use in new construction.

Several more years elapsed before EPA established a voluntary program for the detection and abatement of asbestos health hazards in the schools. By January 1984, six months after the deadline, only 11 percent of America's school districts were in complete compliance with the EPA rule. That is why such a comprehensive program such as AHERA was necessary.

The elimination of asbestos hazards is long overdue. The further delay provided under Senate 2024, Senate 2025, and House Resolution 3893 would only subject school children and employees to at least another year and one-half of hazardous exposure.

The introduction of legislation to extend the deadline sends the wrong signal to the State and local agencies. Some school districts expect the deadline to be extended, so they are waiting to begin plans.

Congress must be unequivocal in its message to responsible officials.

Friable asbestos is a hazard. It is present in America's schools, and it must be removed, contained, or maintained to ensure that the danger does not persist. There are many steps that schools can take to expedite inspections. Many schools were properly inspected for asbestos according to the previous EPA regulations, and these schools may be granted exclusions from the new inspection requirements under AHERA.

Schools can have their own staff people certified at a three-day EPA-approved course. At my home State of Wisconsin, most schools are moving forward to comply with AHERA in a responsible and timely manner.

Many smaller school districts in Wisconsin, such as my own, participate in what are called cooperative service educational agencies, or CSEA's, to contract various services. CSEA 10, which includes Lake Holcombe School, has already contracted with a certified company to do the inspection for all 30 CSEA schools in CSEA 10.

EPA has made considerable progress in expanding access to EPA-approved courses to train inspectors and management planners. There are more than 5,000 accredited inspectors, as Dr. Moore indicated, and management planners. There are 2,000 new inspectors being accredited each month, as he said.

If schools still face obstacles in meeting AHERA's time lines, these problems should be addressed directly. An extension of time

by itself, there would be no additional resources, it would not provide any additional qualified people to conduct the inspections, and it would not increase the number of training centers to certify personnel to conduct inspections.

Rather than proposing an extension of the AHERA time lines, NEA recommends that Congress enact $25 million of the fiscal 1988 supplemental appropriations for EPA, $15 million of which could be used to provide grants to States under the Asbestos Inspection and Management Plan and Assistance Program, and the remaining $10 million could be used to add staff in the regional offices to assist with inspection and management plans, to expand the number of training courses to certify inspectors, and to provide financial incentives to increase the number of accredited analysis labs.

If Congress still believes that more time is needed, there are better alternatives than a blanket extension. We urge you to consider such alternatives as granting EPA authority to provide temporary extensions, should it be warranted, on a State-by-State or school district-by-school district basis.

Another possibility is to grant EPA authority to waive penalties for noncompliance temporarily if a school district has made good faith to comply.

It is time to accept that the problem does exist and work together to eradicate this threat. EPA estimates that it will cost more than $3 billion to fully address the problem of asbestos in schools. To date the Federal Government through ASHAA has provided only about 6 percent of the total cost, and yet in spite of the known danger, President Reagan recommended only $3.4 million for ASHAA for fiscal year 1989.

We urge you to support a fiscal year 1989 appropriation of the full $125 million authorized for ASHAA in light of the needs of the school districts and the lives of the affected citizens, the only appropriate response is to provide the resources to carry out Congress's intent in both ASHAA and AHERA.

Thank you.

Senator BAUCUS. Thank you.

The final witness on this panel is Mr. Robert Anderson of the Montana School Board Association.

STATEMENT OF ROBERT ANDERSON, EXECUTIVE DIRECTOR, MONTANA SCHOOL BOARDS ASSOCIATION

Mr. ANDERSON. Thank you, Mr. Chairman. I am glad to be here, and I appreciate the opportunity to air this concern today.

In deference to the time limitations, I am submitting a written statement for the record and will limit my oral remarks.

I am Bob Anderson, Executive Director of the Montana School Boards Association. I am here today testifying on behalf of the National School Boards Association and the 95,000 local school board members nationwide.

I am pleased to testify at this joint hearing in support of the extension of the AHERA deadlines for asbestos management in schools. Our purpose for seeking a deadline extension is to protect

the health of our school children and employees by allowing adequate time to do the job safely and effectively.

The lack of necessary resources to do the job right will only result in the development of asbestos management plans that are of poor quality, wasteful, and potentially dangerous.

Our members have reported to us over and over that objective circumstances beyond their control make meeting the AHERA deadlines impossible. The task is too enormous and complex, and the necessary resources are too scarce.

AHERA requires that every school district inspect all 107,500 school buildings for asbestos and submit a management plan by October 12th, 1988. Even if a school has identified asbestos and removed it previously, an accredited inspector and an accredited management planner must document that the building is asbestos free.

I am talking about both friable and non-friable. I think we have kind of skipped the non-friable here today.

However, the Environmental Protection Agency did not distribute to school districts 50 pages of the final regulations for AHERA until November, this past November of 1987. School districts did not receive the EPA's official guide to regulations until last week. I was barely able to get a hold of a copy of this that delineates the responsibilities of the school districts. I do not believe this is in all of our schools in Montana at this time, seven months prior to the deadline.

EPA's model asbestos management plan is still available to school districts. It's model training program for inspectors and management plans will not be out until April, only two months before the summer when schools can best carry out the inspections.

This is a copy that I brought of the EPA's draft curriculum, a little bit of material to cover here for the inspectors, many of them who are teachers and administrators, other people, who are doing this. I thought the committee ought to get a rough idea of how complex the material it is and how bulky it is.

EPA has reported that approximately 5,000 inspectors and planners are now certified. Given over 100,000 buildings and an average four weeks to inspect, analyze samples, and write a management plan for a school building, these certified workers each have about 20 months to perform this work.

Unfortunately, the EPA stated that it does not expect all of the 5,000 trainees to do work in schools, nor does it know if they are all located where they are most needed. I know we have no training facilities in Montana. The nearest is Salt Lake City.

Currently only 23 centers exist for inspectors and planners. According to the NSBA phone survey, most of these have waiting lists ranging from 10 to 320 trainees. One training center is not planning to offer any more courses, and some new centers are not scheduled to start courses before May, less than five months before the deadline.

This training bottleneck means that school districts will be competing for a limited pool of inspectors and planners for work that must be done all at the same time.

As the deadline nears, many districts will become victims of price gouging or have to settle for inspectors and planners whose

total experience is EPA's five-day training course. I call those people five-day wonders.

The training bottleneck has also prevented many school districts from having their own staffs certified to do the work which would require cost and assure more experienced workers.

AHERA regulations also require all 17,000 school districts to designate one person with adequate training to supervise and approve inspections and management plans. These prime candidates for EPA training have nowhere to go. This greatly weakens school district control of the quality and increases tremendously their liability for errors and omissions.

An even greater bottleneck is a lack of enough certified laboratories to process hundreds of thousands of samples of suspected building materials. Poorly done sample analyses are the greatest threat to the ability of school districts to protect students and employees from asbestos hazards. Without high quality lab work, districts may dangerously underestimate asbestos hazards or carry on unnecessary abatement projects.

A study by the Texas School Boards Association reveals that some laboratories are diluting the quality control standards and overstating their testing capacity in order to attract clients. Texas is estimating a backlog of 40,000 to 60,000 school district samples by August 1st of 1988.

Again, the EPA cannot guarantee that 175 labs currently certified are sufficient to do the job or are located where they are needed.

My written testimony describes other serious deadline obstacles confronting school districts. These include the long lead time needed to budget properly for the cost of inspection, inconsistencies between State and Federal asbestos laws, and a limited opportunity for State review of management laws.

In conclusion, NSBA is convinced that it is impossible for school boards to assure parents, and employees, and staff that asbestos abatement will be carried out safely and effectively under these deadlines.

Furthermore, we do not believe that the prospect of a $5,000 a day fine starting next October 12th will eliminate any of the obstacles to compliance described above.

Instead, the NSBA recommends an extension of deadlines by at least 18 months in order to allow all school districts to do the job right. Eight other National Education Associations, including the Council for American Private Education, support a deadline extension.

We also recommend that the committee support an increased authorization of grants and loans as proposed by Senator Melcher.

Finally, we ask Congress to consider a plan for a Federal bond program to help underwrite and cover the $3 billion cost of asbestos abatement.

Again, Mr. Chairman, I appreciate the chance to comment.

Senator BAUCUS. Thank you, Mr. Anderson.

You know, sometimes to find a solution it is not a bad idea to put ourselves in the other guy's shoes and walk around a little bit and see the problem from the other person's point of view.

What I would like to do is ask Mr. Guttman and Mr. August and the other panelists to put yourselves in the shoes of the school boards for a while and see the problem from their point of view and then tell me what you think their best, most legitimate point is, and then how you would address it.

Then after that, I am going to turn to Mr. Anderson and ask him to put him in the position of teachers and parents and service employees and ask him to tell me, tell all of us what the most legitimate points of view are, as he sees them, and how he might address them.

So let's just start with you, Mr. Guttman. We haven't a lot of time here unfortunately, but just very briefly tell me your point of view, that is, from the school boards' point of view, as you see it, what is the most legitimate concern they have and how you suggest that be addressed.

Mr. GUTTMAN. Thank you, Mr. Senator.

To the extent that this issue was discussed in 1986 when AHERA was passed, these specific issues raised by Mr. Anderson were accounted for in the legislation. Accordingly, 15 U.S.C. 26——

Senator BAUCUS. You are not answering my questions. I want you to tell me the legitimate concerns that he has.

Mr. GUTTMAN. Well, I think there is a legitimate concern——

Senator BAUCUS. What is the most legitimate, the best argument that the school boards have?

Mr. GUTTMAN. I did try to put myself in Mr. Anderson's place. Last week I made two phone calls to Montana, and I understand that there is a freeze on property taxes which makes it difficult for local education agencies to actually fund abatement programs. To the extent that there may be money needed to be channeled locally to alleviate this problem, I think that is one viable solution.

Senator BAUCUS. I'll tell you, there isn't.

Mr. GUTTMAN. You asked me to address Mr. Anderson's concerns, and I think that is certainly one concern. There is not enough money, and money is certainly an issue.

Senator BAUCUS. Money, and as you heard him, availability of inspectors, for example, certified inspectors, deadlines and so forth. That seems to me legitimate.

Mr. GUTTMAN. I'm sorry, excuse me?

Senator BAUCUS. That seems to me to be a legitimate concern he has and school boards have.

Mr. GUTTMAN. I don't think the issue is the number of inspectors in Montana so much as it is perhaps the cost of inspection. To the extent that AHERA already has provisions in it that allow the EPA some leeway on enforcing compliance to account for those specific local problems, this has already been accounted for in 1986 in a very well crafted piece of legislation.

Senator BAUCUS. Thank you.

Mr. August?

Mr. AUGUST. Well, the issue of meeting the deadline of October 12th for the inspection and management plan strikes me as a legitimate concern, and the concern that they be able to find a mechanism to, one, for those schools who have been responsible and have tried to make a good faith effort, that there be a mechanism devised so that previous inspection plans can be dealt with quickly.

For instance, the question was raised, how long does it take to review somebody else's inspection. That's not a long process.

That would help, as well as schools being able to have preferential treatment to enroll their own folks. Those are legitimate concerns. Can they get their people into those situations where they can do the work and control the cost.

Something can be done I think at that point to address that concern that they get their own people into those courses.

Senator BAUCUS. That is, the school districts should get their own people in the courses?

Mr. AUGUST. Yes. They have a legitimate concern, can they get their people to do the work, to control costs.

Senator BAUCUS. As you see it right now—you are a school board member right now.

Mr. AUGUST. Yes.

Senator BAUCUS. Would that basically solve the problem?

Mr. AUGUST. Well, using the example that was brought up from Wisconsin.

Senator BAUCUS. Now you are a school board member.

Mr. AUGUST. Yes.

Senator BAUCUS. Right now you are a school board member. Would that solve the problem?

Mr. AUGUST. I believe so because, as the example from Wisconsin pointed out, school boards can pool resources. If they have a stationary engineer who has some experience with the structure of buildings on staff, they can share that resource, send him to a training center, and then all those school districts have the availability of that person.

As it was pointed out before, it doesn't take weeks or months to do an inspection. If it is a one building deal, it is a matter of days. If it is a few buildings, it is even a week or so.

Senator BAUCUS. So, if you are a school board member, I don't want to pick out Montana particularly, but it happens to be that in the State of Montana, the nearest location for training I believe is Salt Lake City. Do you know how far Salt Lake City is from Yak, Montana, or say from Eureka, Montana? Do you know? Guess.

Mr. AUGUST. I am sure it is a good 500 miles.

Senator BAUCUS. No. It's over 1,000 miles. It's a long ways.

Mr. AUGUST. If I could just comment on that last point.

Senator BAUCUS. Sure.

Mr. AUGUST. If, say, the schools are dispersed that way, if say 10 schools got together and shipped in for that one air fare, then that 1,000 miles is not a barrier to get that person trained.

Senator BAUCUS. You ought to try traveling in Montana back and forth. It's a major barrier. Ms. Lynch.

Ms. LYNCH. I believe that from the National PTA's standpoint my concern is that as a parent with a child in an asbestos school—

Senator BAUCUS. No, no. You are a school board member right now.

Ms. LYNCH. I know, and I am going to be asking the school board, which I do weekly—

Senator BAUCUS. No, no. You are a school board member. You are a member of the school board. You've got budgets, you've got training problems, you have to meet these guidelines.

Ms. LYNCH. First of all, I think the big concerns that most of the school boards have, and I then have as a school board member, is the lack of training centers to train my local personnel, the lack of certified inspectors and management planners, the lack of laboratories, and the money that they need to prioritize in other directions. As school board members, we need to put some things on hold.

So I would suggest that my fellow board members, here, that we join together and encourage Congress not to extend the deadlines, but to provide some assistance to help us meet the deadlines. Congress might require EPA to expand the number of inspectors and the management planner courses, giving priority to school district personnel rather than the general public, and to require that the EPA directly or through contract to maintain an ongoing list so that as a school board member I have access to a list of where those inspectors are so that I might use one.

I think that the EPA should expand the number of laboratories.

I think that we should also—I go along with my fellow board member at the end of the table, increase the appropriation for the ASHAA grants and loan program so that other school districts who are in the same terrible mess I'm in can receive funds. But I have a commitment that we should get this done somehow.

Senator BAUCUS. Thank you.

Ms. Schleife?

Ms. SCHLEIFE. Thank you.

I think that there are two concerns that a school board member has. One is the overall welfare of the child in the school district and the employees that are employed there, and be conscious that there can also be legal suits against my school district if I were not to comply with the regulations.

I've had a neighboring school district where a teacher did indeed bring a superintendent to comply with the regulations because they brought forward that kind of action.

The second thing that I think that was pointed out and is legitimate is the need for EPA to provide for the lab situation, or to provide for the trained individuals.

Now in the case of my school district what they did is they went through this CSEA group, they made a broad-range kind of application. I've been in Montana. So I know how far it is to get to anyplace. But we ended up hiring an agency out of the Twin Cities area for three cents a square foot, and we have 88,000 square feet. I am in a K-12 district, all in one building, 600 students.

I think if a district that size can comply with the regulation, that I had that oversight to see that the regulations were coming down, a postponement is not going to make it any better for us.

The real problem is going to be coming when it comes down to financing the removal of that asbestos.

One of the other parts of the testimony that I submitted was the war story of where a superintendent indeed assigned a shop teacher to take his students in to remove asbestos. You can't delay these time lines, and that's what NEA would say.

Senator BAUCUS. Thank you.

Mr. Anderson, now you are a teacher, you are a parent, you are a service employee.

Mr. ANDERSON. Mr. Chairman, I have worn all of those hats. I have been a school custodian, I have been a school bus driver, I've been a teacher for a number of years, I've been an elementary principal, a secondary principal, a school superintendent. I have a daughter who will graduate from Montana State University as a teacher, an elementary teacher, this spring, I hope. I expect her to. I have a granddaughter who will be a student in three years.

I am concerned about their health. The School Boards Association is as concerned about our employees 'health and our staff and our children's health.

The question that keeps coming up is why can't we have different, in a sense, a variance or different regulations for different schools. To me it would be like having a speed limit that is different—the speed limit is a big thing in Montana—that is different for different individuals out on the highway, and that the highway patrol, like the EPA, would have to determine different penalties or different variances for driving at different speeds for different circumstances.

I think we need a reasonable time line, and the one we suggested we think is reasonable, and that everybody understands that and can get the job done. We are here today saying that that is 18 months.

We need a clear-cut message that every school district and every State can understand. I haven't just been in schools in Montana, I've been accrediting schools in Alaska and other States in some of my past duties. At one time I was in charge of a statewide program to go on-site to every school in our State, and I've been to almost every school, including some unusual schools in our State that are quite distant.

In many of these small schools—we have 114 one-room school houses in Montana. Five of them, incidentally, have outdoor plumbing yet. Those buildings, incidentally, those outdoor johns will be inspected under this plan. But at any rate, the teacher in that school system is the custodian as well, and they will be responsible for making a determination of what is going to happen as far as the asbestos program goes.

We want to make sure, and I would guess you would want to make sure that the deadlines are very clear and everybody understands them and it is a reasonable enough time that we can do something about this. We want to do something about this.

I'm not sure, but it sounds to me like there was a consensus across the board here in terms of getting this job done and that there could be some flexibility to doing that. I would stand by our suggestion that it be more timely.

Thank you, Mr. Chairman.

Senator BAUCUS. Mr. Anderson, if there are some financial resources available or if somehow inspectors are more readily available, if more EPA resources were readily available, and if the red tape was cut back and so forth, to what degree would that meet the concerns of most school districts that you are aware of?

Mr. ANDERSON. I can also speak here as a contractor because our school boards association has decided that we can reduce the cost to districts and we can also provide insurance, which none of the other competitors can do, for school districts. I guess in looking at

that, Senator, I would prefer that people who have training in understanding school building materials, such as engineers and architects, are much more appropriate for this. That's what we have decided to do.

I do have a problem with anyone who off the street takes a five-day course and suddenly understands all there is to know about school building materials. We found asbestos in chalkboards in schools, for example. Many of our schools still have chalkboards. I would guess that is true in other States. But that was because we had an experienced engineer who understood building materials to find that and test that.

Senator BAUCUS. What is your reaction to the EPA Assistant Administrator's point that if the deadline were extended, he would suggest the July 1989 deadline rather than the October 1988, if you were forced to take a position as to the merits of the two?

Mr. ANDERSON. I guess I would have to say that I don't believe we could comply with that in our particular State, and I'm sure in other States where there are far more schools and so many districts—even though we talk about our vastness in our particular home State, many States have so many different districts and school buildings——

Senator BAUCUS. Just briefly on that point, could you tell me about the different degrees of difficulty in reaching each of the two different deadlines, very briefly. Why is one more difficult? Are they equally difficult to meet, or is one more difficult than the other, and why, very briefly.

Mr. ANDERSON. The first deadline is so critical because it sets up the mechanism by which the next deadline must be enforced and go into place. I would guess that the first deadline is most important.

It is going to be difficult to find those people who will be in the abatement business, but schools do have at least some time to work with that, to set up their priorities, to budget for that.

But the first deadline in developing this management plan pretty well sets in motion, describes the landscape of what school districts have to do.

Senator BAUCUS. Do the others have any reaction to that point as between the two deadlines, if one were extended and the other not, or one more than the other; that is, the relative importance of the two deadlines? Again, very briefly. We have more witnesses—only if you have a strong view.

Mr. AUGUST. There certainly is no reason to, that I have heard any evidence on whatsoever, to delay the July 1989 implementation date. No one has come across with any of it and said there is any shortage of people to do the work.

I was at a recent briefing with EPA where, I can't remember the figure, 25,000, 30,000 already certified people. Thirty-nine States have already got certification programs for workers up and running. So the training is going on. The financial incentive is more than there for people to get into this work.

So I don't think there is any reason whatsoever to touch the July 1989 deadline because the workers are just waiting to get in there and do the work in 39 out of 50 States.

Ms. SCHLEIFE. Senator, I believe a delay of any kind is detrimental to the kids in school. I think it only postpones the decision to get going. I think if the time lines are kept in place, decisions will be made on how to finance it.

There are assistance programs. That's what AIMPAP kind of did in my district, and they got on board. Like the gentleman pointed out, 39 States already have complied.

I think the concern that you need to have though is for those States that are not in compliance, what additional assistance can we lend to those States where they may not have the population or tax base to take care of it, because there are some avoidance kinds of things where you take it out of one pocket and put it in another.

But I don't think this can be delayed.

Senator BAUCUS. I hear you. The trouble is that all these regulations tend to assume homogeneity in America; that is, population density, transportation facilities, proximity to EPA regional office, to financial resources. That's the trouble. I'll just tell you, there is homogeneity in this country.

I know kids are kids, and parents are parents, and teachers are teachers, and school boards are school boards, but the problem is that as a practical matter the effects of these rules have a very uneven application.

I'll just tell you that, without making the point too strongly, the more it is we move toward deregulation of transportation, airlines, buses, and trains, financial services, it just makes it even more and more difficult for the smaller school districts, the more rural school districts, the more rural communities. It's a problem that has to be addressed.

I think that some communities can address some of these problems more easily than can some others basically for that reason. We are not an even country in that sense.

Ms. SCHLEIFE. I consider that I live in Lake Woebegone East, and I am not from a big district. I think what I mentioned earlier was the fact that there was a consolidation by school boards and by administrators——

Senator BAUCUS. Where is Lake Woebegone East?

Ms. SCHLEIFE. Well, it is in the northwestern part of Wisconsin. It is about 120 miles from the Twin Cities which is where we found the company that is going to do the investigation.

Senator BAUCUS. How far is Salt Lake City from Eureka, Montana?

Ms. SCHLEIFE. Listen, we have to fly to Minneapolis to get anyplace. It's the same kind of bus.

Senator BAUCUS. I submit there is a major difference even between East Woebegone and most communities in States as vast as Montana. There is a major difference.

Ms. SCHLEIFE. Senator, it is the health of the kids though, regardless of whether they live in Montana or Wisconsin or Louisiana.

Senator BAUCUS. That's true. That's exactly right. But the answer though, it seems to me, therefore, is that some kind of financial resource to help those other communities that have a hard time making it.

We have more panelists. Thanks very much.

Our final panel includes Mr. William Echols, Mr. Richard McDonough, Mr. John Welch.

Who wants to begin? Mr. Echols, why don't you begin.

STATEMENT OF C. WILLIAM ECHOLS, JR., GOBBELL HAYS PARTNERS, INC., NASHVILLE, TN

Mr. ECHOLS. Thank you, Senator.

I would like to summarize our written testimony that has been provided to the committee.

Senator BAUCUS. We are going to have to move quickly during this panel, so brevity and pithiness, and be succinct.

Mr. ECHOLS. Thank you, Senator, I will try to do that.

We have basically asked five questions that I would like to run through very quickly for the committee.

How is the infrastructure developing and progressing? Our opinion is that the five training centers that EPA has been sponsoring over the past few years are doing an excellent job.

At the same time, the National Asbestos Council, the Association of Wall and Ceiling Industries are doing an excellent job in providing other similar training facilities. The National Institute of Building Sciences has been moving to develop general and technical specifications that are being accepted more and more across the country as the abatement documents to be followed.

At the same time, the American Institute of Architects in its new 1987 revised documents for the first time recognizes the presence of asbestos, but they are not moving to train people but are beginning to provide contract documents for owners, architects, and contractors in dealing with it.

So, again, we feel that the infrastructure in training is progressing well, but we do see very much of a bottleneck in testing laboratories.

The second question, are there geographic areas where the infrastructure is better or worse? The answer to that is yes.

I spent three and a half years in the State of Alaska doing work there. I think the vast size of Alaska and certain other portions of this country have always experienced a difficulty, and imbalance, in locating qualified companies.

But basically in three areas, it happens all across the country. First, the enlightenment of the general public on the asbestos issues is as present in large cities as it would be in any small farm communities. Secondly, less populated areas, rural versus urban, small town versus city, does present some problems, and lastly, the progressive attitude of the local governing bodies as they move to address the issue of asbestos and AHERA is very apparent too.

So there are geographic areas that do create some difficulties in getting qualified inspectors.

Is the infrastructure competent to address AHERA? Yes, I believe it is, but there should be three considerations that go into defining the infrastructure. Training alone is not the mechanism that makes a competent or qualified person.

I think the testimony today has addressed that. We would agree with that.

Two other things have to go along with defining who a true competent person is other than the certificate: education and building sciences. Registered architects, certified industrial hygienists who have building construction experience must play a large part.

The final and most important aspect in defining competence with anything, and not only with AHERA, is experience. Anyone who has had previous experience in taking samples, in dealing with the design and the physical removal, encapsulation or enclosure of asbestos, those three things play a very important part in defining who is competent.

Are the competent components of the infrastructure moving out of schools into the private sector? Yes.

I think that one of the things that drives this is EPA's progress over the last ten years to make the general population aware of the hazards of asbestos. Those include, naturally, building owners and building occupants. The same parents who are concerned about the asbestos in schools are now concerned with asbestos in their workplace.

So, again, it is the general and technical awareness of the general population becoming more and more concerned.

Certainly as the asbestos abatement marketplace increases, those competent and trained and experienced people are moving out of the schools into larger, more complex buildings, such as high rise buildings that must maintain occupancy and have difficult and very complex HVAC systems.

The final question: Are private building owners concerned with asbestos and are similar rules to AHERA needed? We believe yes. It's a natural extension into the private sector from the schools, but at the same time, it did not take AHERA to cause schools to move to deal with the asbestos issue, but eventually it is taking AHERA to cause a balance across the country in having all school districts deal with asbestos.

We think that the private sector has already begun to move, but that AHERA in the private practice at some future date will be needed to correct that imbalance too.

Thank you, Senator.

Senator BAUCUS. Thank you.

Mr. Welch?

STATEMENT OF JOHN F. WELCH, PRESIDENT, SAFE BUILDINGS ALLIANCE

Mr. WELCH. Mr. Chairman, thank you for the opportunity to speak today.

The monumental institution problems that Congress foresaw in 1985, sadly, as we've heard today, are still with us. There are not enough qualified inspectors. There is a new problem with respect to slipshod laboratories; we have problems with unreliable hazard assessment methods, and the longstanding problem of removals that increase rather than decrease asbestos exposure in schools.

Simply stated, the resources available today to perform asbestos work are either so scarce or so scary, that we are creating health problems rather than controlling them.

The real supply of reliable, trained contractors is anyone's guess. We've heard all sorts of estimates this morning. Let me put another one on the table, and I think it is a more thoughtful one. A survey done for SBA shows, and we have appended it to our testimony, that a minimum of 28 States have no certified contractors, AHERA or otherwise, or the numbers are not available to schools or the public at large.

New Jersey, for example, one of the first States to put into place comprehensive training and licensure laws, as of March 9th had only 12 AHERA accredited assessors to do work in over 3,000 local educational agencies. How many of those are good contractors is anyone's guess. I share the concerns that Mr. Anderson, the previous speaker, expressed about making sure that these people have experience in building sciences and related disciplines.

A new problem: "asbestos mills." The most fundamental test in an asbestos inspection is whether the building materials even contain asbestos. In the past, EPA has conducted a voluntary testing program to evaluate laboratories that do kind of analytical work. AHERA now requires accreditation of these laboratories.

The results from the last two rounds of laboratory evaluation tests are extremely alarming. The August 1987 round found that only 57 percent of the labs in the country could always determine correctly whether or not the materials even contained asbestos. If that round had been used for AHERA accreditation, that means nearly half the labs in the country would have flunked.

Now we understand that round was purposefully difficult, which makes it somewhat perplexing as to why EPA made the next round, the January AHERA accreditation round, so easy. But even in spite of the fact that EPA made the January round so easy, one lab out of seven still failed to identify correctly all asbestos materials.

Hazard assessment methods. As part of its report to Congress, EPA field-tested whether accredited inspectors could consistently and reliably assess the condition of asbestos materials. Their studies show that 95 percent of the time inspectors could not agree on the three factors commonly used to make abatement recommendations to schools. They couldn't agree 67 percent of the time whether the materials were in "good" or "significantly damaged" condition.

Those findings, Mr. Chairman, are an unmistakable caution signal because those assessment factors and those same kinds of inspectors are today making recommendations to schools as to what they ought to do with asbestos materials.

The health effects of low level exposures to asbestos. The scientific evidence on that issue in 1988 is simple, consistent, and compelling. No less than 15 expert scientists or studies have concluded that indoor asbestos exposures in the vast majority of buildings are not significantly different than outside air. Ten scientists or expert groups throughout the world have concluded that low level asbestos exposures pose negligible risks to building occupants when compared with other risks.

SBA shares the concerns of labor unions and others about peak or episodic exposures that might occur when they cut into a piece of pipe insulation, for example. We have encouraged, as they have,

operations and maintenance programs whose primary purpose is the prevention and control of those kinds of occurrences.

EPA clearly needs to spend more research time and effort looking at peak exposures, including the biggest peak exposure, which is asbestos removal. What we already know about removal is very, very scary. Clouds of asbestos are released, containment barriers leak, and cleanup is extremely difficult to effect. The Agency's own studies show consistently that asbestos exposure levels in schools and other buildings increase after removal projects. A recent British study concludes that asbestos levels can remain elevated for a period of ten months or more.

Dr. Moore said when EPA released its public and commercial buildings report that we shouldn't panic about asbestos in buildings. While we agree with that, we also believe that Congress and the American public ought to be concerned. They ought to be concerned about unlicensed and uninsured abatement contractors; they ought to be concerned about slipshod laboratories; and they ought to be concerned about unwarranted and dangerous removals.

We commend the chairman and this subcommittee for its thoughtful and timely oversight of this important issue and pledge our cooperation and support on this and other legislative matters.

Senator BAUCUS. Thank you.

Mr. McDonough?

STATEMENT OF RICHARD C. MCDONOUGH, EXECUTIVE VICE PRESIDENT FOR REGULATORY AFFAIRS, FIDELITY ENVIRONMENTAL INSURANCE CO., ACCOMPANIED BY EMIL DEVITO, PRESIDENT

Mr. MCDONOUGH. Thank you, Senator. My name is Richard McDonough. I am the Executive Vice President for Regulatory Affairs of Fidelity Environmental Insurance Company.

Fidelity is a New Jersey licensed stock insurance company headquartered at 600 Alexander Road, Princeton. Fidelity was started with an initial capital and surplus of $10 million, and it is able to write insurance in all 50 States in one of three ways: as an admitted carrier, as an excess and surplus lines carrier, or pursuant to the Federal Liability Risk Retention Act of 1986.

Jim Sheeran and myself, both former insurance commissioners, organized Fidelity specifically to provide the asbestos abatement industry with the highest quality insurance coverage possible. Perhaps the most unique aspect of Fidelity's operation is that it issues an occurrence form of cover, $1 million in the annual aggregate, and also a $1 million per job aggregate if required by the owner.

I am not trying to shill for Fidelity, I'm just trying to set a stage.

Senator BAUCUS. I understand.

Mr. MCDONOUGH. Fidelity believes that proper work procedures are the key to minimizing long-term liability problems for both the building owner and the asbestos abatement contractor. For this reason, all contractors insured by Fidelity must qualify for membership in our purchasing group.

To qualify for membership, the contractor must demonstrate financial strength and stability and meet the highest loss-control standards.

Fidelity has established stringent work procedures and guidelines which contractors are required to follow. The company has also established a staff of trained loss-control inspectors who rigorously monitor insured work sites to ensure that the contractor's work performance is of the highest quality. This program of job site inspections makes Fidelity different from almost every other insurance company in the field.

I did file a statement, Senator, and I am going to jump through it. I am not going to follow it.

Senator BAUCUS. Fine.

Mr. MCDONOUGH. We know what we are up against here. We have asbestos, and a very long period of time will elapse before the disease will manifest itself. If you will, when a contractor removes asbestos he is subject to two exposures: one, to third parties that are injured, exposed, while the job is in progress. Now if everybody followed our work standards and did the removal in accordance with the guidelines, no persons should be injured or exposed, the proper precautions would have been taken to isolate the area.

The second is to the student, for this particular hearing, who returns to the building and stays in that building and then has an ongoing potential exposure. Again, if our standards are followed that shouldn't happen, the air would have been tested and met the standards. Incidentally, our standards are higher than OSHA or EPA.

I guess my point is that the insurance company believes the best way to protect its investment is to set high standards as to removal and inspection process to ensure that we will have the least exposure down the road.

I am mindful of and would bring to your attention the Hartford Steam Boiler Company which in the 1850's decided to insure boilers. Everybody said it couldn't be done. They probably have the lowest loss ratio of any insurance company in business today, but it is because they do their work up front, Fidelity follows this same philosophy.

Now to the real purpose of my testimony. I brought a couple of exhibits of the kind of coverage that is out there. This is the insurance policy.

A claims made policy is a one-year policy typically, and at the end of the year it goes away. Asbestos claims will not occur from the work that the contractor does until perhaps the year 2000. This policy is gone. There is no coverage for that person who was exposed during this period.

The only way that claims made coverage could reach out to the year 2000 would be if the policy were renewed annually, every year; till 2000. That means the contractor and the insurance company both have to want to do it. If the contractor folds his tent in 1990 and goes to Florida, no coverage because he won't be renewing the policy or paying the premium. The insurance company may decide not to renew at any time. In either event there would be no coverage in the year 2000.

So the claims made form is not appropriate. However, it is the most used policy in asbestos today, but it is not appropriate.

The only real coverage is the occurrence form policy. Then, in the first year you pay a premium, and there is coverage for injuries

that occur during that policy year whenever the claim is asserted, there would be coverage in the year 2000 in our example.

So of the two principal forms, claims made and occurrence, it is clear that occurrence is the right form.

There is something else wrong with the claims made policy. That is, in this example, if you have in the first year a contractor who has taken out a claims made form with a $1 million annual aggregate, and that is the typical policy, he would have—let's say he does 50 jobs. He has 50 jobs, and he has $1 million in coverage. That policy ends at the end of that year. In year two he renews. What he has done is—and he is still doing 50 jobs. What he has done is he now has 100 jobs with a $1 million aggregate, because by renewing this year he picks up any possible claims from year one. The same goes for the third year, the fourth year, and let's say in the fourth year he has now done 200 jobs, and he still only has the $1 million of aggregate coverage.

Now he decides either that he won't renew or the insurance company says, sorry, we don't want to renew. Then there is no coverage for any of those 200 jobs.

So that claims made has two limitations on it, if you will. One, it starts to stack, so you get many more jobs that are looking to that particular policy aggregate and when terminated for whatever reason there is no coverage.

There are two kinds of occurrence policies being written today. We are the only company writing one, and there are several companies writing the other. With occurrence policy, you pay a premium in year one, 1988. If a person is exposed in 1988 and the claim is presented in 2000, there is coverage by the payment of that single premium in 1988.

The two kinds of coverage with the occurrence form that are offered are, an annual aggregate and a per job aggregate. The annual aggregate says I will give you $1 million coverage per occurrence, with a $1 million annual aggregate. So if the company paid $1 million to one person, that would be the end of the coverage for that year. So there is a $1 million policy—I just used four here so that it would be easily understood, but if it were 20 it would be the same $1 million coverage.

The aggregate per job insurance, which is what we offer is, in our opinion, the best policy for all persons concerned, the contractor, the owner, his agent and the like. Unfortunately I am not sure that in every instance every contractor really believes that. But the people that we have met, some very fine contractors, and we have already certified them, they want this per-job aggregate, and certainly the owner of the building wants it, and certainly the school boards want it.

Senator BAUCUS. That's more expensive though, isn't it?

Mr. MCDONOUGH. That means that there is $1 million on each job.

Senator BAUCUS. It is more expensive, isn't it?

Mr. MCDONOUGH. It is more expensive, but not in relationship to——

Senator BAUCUS. Are contractors easily covered? Is it easy to get insurance, or does it cost——

Mr. McDONOUGH. No, they are not. I don't know, from their standpoint, but the people we insure are interested in the occurrence form both the annual aggregate and the per job aggregate. What they do is use the annual aggregate to insure their smaller jobs. We can't issue a $1 million policy on a $15,000 removal job, so they put the small jobs in the annual aggregate policy. It's when they get up into the larger jobs, $100,000 to $150,000 of cost, then they want the per job aggregate.

But the key point I want to make at this hearing on AHERA, I heard testimony about the students and the children, is to point out that to permit the claims made form to be a used is not really in the best interest of anybody.

Senator BAUCUS. I appreciate that.

Mr. McDONOUGH. I know certain contractors and insurance companies will not like that statement, but the fact of the matter is, they probably won't be around 20 years from now when the claims are made and the coverage is necessary. Consider the large sums of money that is being paid for coverage that won't respond when necessary.

Senator BAUCUS. But there is no requirement for insurance coverage, is there?

Mr. McDONOUGH. No, there is not.

Senator BAUCUS. In the APA regulations or nothing like that?

Mr. McDONOUGH. No.

Senator BAUCUS. So it is just up to the school board and the contractors themselves, particularly the contractor?

Mr. McDONOUGH. What we find is the really interested person is the owner of the building. We are going through an education process. We are trying to show the owner that he has the big stake because his building is going to be there. If the contractor folds his tent and takes his corporation through a liquidation or dissolution, excuse me, he won't be there to respond, but that building will be, and the owner will be sued and the building——

Senator BAUCUS. How many claims have there been by people who were exposed to asbestos, friable asbestos say in the schools?

Mr. McDONOUGH. How many?

Senator BAUCUS. Yes.

Mr. McDONOUGH. I don't know that. I don't think anybody can tell you that.

Senator BAUCUS. How about public buildings then at this point?

Mr. McDONOUGH. I don't—we just had a case, perhaps you read about it, I believe it was in Chicago there was a woman who sued who was working in that building, but she sued the owner of the building who was not her employer and got a $525,000 verdict.

One of the things that distinguishes what we are doing is that when we start a job now, we can identify going in because we test as to what the quality of the air was, and we test during the process, and we test at the end. A potential claimant then would have to not only prove that there was an exposure, but that we violated whatever were the acceptable standards at that time.

So I can't answer your question because nobody has been keeping records of those cases. All we hear about—and why there is such a large body of insurers that don't want anything to do with this kind of coverage is that they are smarting from their losses in the

Johns Mansville and other manufacturing cases and just don't want to touch it.

We are partly—I mean, we are owned by a contractor who lost his occurrence coverage with his carrier. He had an occurrence policy and did not want the claims made, so he put up the $10 million and started this company and made it a viable opportunity.

Senator BAUCUS. I apologize. We are going to have to conclude this hearing. I want to thank you all for coming.

I am frankly concerned that EPA didn't ask for additional funding in its fiscal 1989 budget. I think that would have solved some of the problems that we have. Some one suggested a supplemental, and that may or may not be possible to get through here. But I think that is a major reason why we are here.

I am also very concerned about the inadequate number of high quality accredited contractors, not only the training procedures but also the laboratories. I think that is obviously a problem, and that has to be addressed.

I further don't want to penalize those schools who have been moving ahead very quickly and very forthrightly. One concern obviously of any delays is that it will tend to penalize those schools who have worked very well.

I was not here for the testimony of Mr. Moore, but I understand he tentatively outlined kind of a potential compromise which I will be looking into. In the meantime, we certainly have to clean up asbestos and the program has to be met very forthrightly.

I want to thank all of the witnesses for testifying today. You have been very helpful.

The hearing is adjourned.

[Whereupon, at 1:05 p.m., the subcommittee was adjourned.]

[Statements submitted for the record follow:]

TESTIMONY OF
THE HONORABLE JAMES J. FLORIO

BEFORE THE

SENATE SUBCOMMITTEES ON
HAZARDOUS WASTES AND TOXIC SUBSTANCES
AND SUPERFUND AND ENVIRONMENTAL OVERSIGHT

Tuesday, March 15, 1988

I would like to thank Chairman Baucus, Chairman Lautenberg and the Members of the Subcommittees for giving me the opportunity to testify here today. I commend you for holding this hearing to explore the hazards of asbestos and EPA's response to this health hazard.

The health hazards associated with asbestos exposure are undisputed. Exposure to asbestos can cause lung cancer, mesothelioma and asbestosis. Several years ago EPA estimated that 15 million school children - almost one-third of the nation's school population - and 1.4 million school employees attend schools and work in buildings which have asbestos materials.

EPA first identified asbestos as a public health threat to school children in 1978, and proposed to issue a rule requiring action. This proposal was dropped in 1981, and in May, 1982, EPA issued a final rule under the Toxic Substances Control Act requiring the inspection of all school buildings for asbestos and the notification of parents, teachers and other school personnel when such material was found.

Unfortunately, EPA's rule failed to set standards, did not require abatement action by school districts and did not set up accreditation programs. The rule proved not only to be inadequate, but often exacerbated the problems by its poor guidance. In 1985, EPA conducted a survey and estimated that as much as 75 percent of all school cleanup work was being done improperly.

After this sorry history of dealing with a widespread health threat, Congress responded by enacting the Asbestos Hazard Emergency Response Act. EPA's haphazard and ill-conceived plans to deal with the asbestos problem forced the Congress to step in and require action.

The Asbestos-in-Schools Act required the Environmental Protection Agency to set standards for asbestos identification and abatement in school buildings. It also required EPA to conduct a study to tell us the scope and threat of asbestos exposure in public buildings and to recommend steps to reduce the threat from such exposure.

I know you share my alarm over the results of EPA's study released recently. EPA found more than 500,000 office buildings, apartment houses, stores, and commercial buildings contain damaged asbestos material. And yet, despite this hazard, EPA has decided the best response is no response. For some reason, EPA must believe that if we continue to ignore this problem, it will go away.

EPA told us to wait and see what happens with the asbestos-in-schools program before acting to protect the health of everyone else. This wait-and-see attitude is unacceptable, and I will shortly introduce legislation in the House that will expand the asbestos-in-schools program to other government buildings.

There are some problems with the asbestos-in-schools program, and some schools are legitimately concerned about meeting AHERA's October deadline for school inspections. But, I am not yet convinced that these problems require a change in the deadlines. If EPA provides more opportunity for training inspection personnel, schools can have their abatement plans ready by October. Keep in mind that these are only abatement plans. Actual abatement work is not required until next summer.

There is a shortage of EPA accredited inspectors and managers available to perform the work required by the Act. An inspector/manager training course is a five day course which is now offered at only twenty-three training schools nationwide. These courses usually accommodate up to 90 people per month, and there is an extensive waiting list for each course. At this glacial pace, it will be difficult to provide a sufficient number of inspectors and managers to meet the October, 1988 deadline.

EPA needs to take immediate action to expand the number of training programs so that the demand for accredited asbestos workers can be met. EPA should fund more training centers at universities across the country like the six existing EPA-funded centers.

In addition, there are a number of private EPA-accredited training centers that are fully capable of opening more inspector and manager training classes so that school districts may be accommodated during this time when their demand for these trained professionals is so great.

Let me call your attention to just one example where a state has worked creatively to meet the deadline. A cooperative arrangement was made between the training program at Georgia Tech and the Georgia Department of Education to open a private inspector-manager training course. This course was offered solely for representatives of each school district from across the state of Georgia. Because of the cooperation between Georgia Tech and the Georgia Department of Education, the program was a success and a large number of trained professionals are available

to do the necessary work for the school districts of Georgia.

I am also concerned about the lack of information that EPA should have available to school districts and state officials. A school district seeking an EPA accredited inspector would reasonably expect EPA to provide a comprehensive, up-to-date list of accredited inspectors. Not so; EPA is telling school district officials to "let their fingers do the walking through the yellow pages." EPA simply has to do better than that; such a list must be made available immediately.

Many school districts have also expressed concern about funding. I understand that many school districts failed to include the inspection and management funds into their FY 1987-88 budget cycles and found themselves unable to budget for inspection and management plans until after July of 1988. We must explore the possibility of having private banks or the Federal government offer short term loans to schools, which could be payed back in the next budget cycle.

Instead of using the school program as a smokescreen to prevent further action on asbestos hazards, we must use the opportunity to move ahead incrementally. The question of whether a federal program should be established to deal with asbestos exposure in public buildings should be based on the public health risks from continued exposure to this deadly material.

I want to see the asbestos-in-schools program succeed, just as I want to see that the protections that are extended to the nation's school children are also extended to the rest of us. We cannot do it all at once, but we should move as rapidly as possible.

Thirty four million people occupy buildings with hazardous asbestos. These figures are as frightening as the figures that brought the asbestos-in-schools program to Congress, and they are the figures that require a response, and a federal law if necessary.

The legislation that I am drafting and hopefully will introduce shortly, will expand the scope of AHERA. It will take the next logical, incremental step by placing all government buildings on the waiting list for a safe, asbestos-free environment.

While it is not easy to require the expenditure of more money and the extension of programs, we must keep in mind that people's lives are at stake.

Thank you.

JACK FIELDS
8TH DISTRICT, TEXAS

COMMITTEE ON ENERGY AND COMMERCE
COMMITTEE ON MERCHANT MARINE AND FISHERIES

Congress of the United States
House of Representatives • Washington, DC 20515

CONGRESSMAN JACK FIELDS (R-Tx-8th)
ASBESTOS HAZARD EMERGENCY RESPONSE ACT OF 1986
SENATE ENVIRONMENT & PUBLIC WORKS COMMITTEE
SUBCOMMITTEE ON HAZARDOUS WASTES & TOXIC SUBSTANCES
MARCH 15, 1988

MR. CHAIRMAN, before I begin, I want to express my appreciation to you for the opportunity to appear before the Subcommittee on Hazardous Wastes and Toxic Substances to talk about the pressing problems associated with the implementation of the Asbestos Hazard Emergency Response Act of 1986.

I understand that you also have concerns about the adequacy of the statutory deadline in the Act, and have introduced S. 2024 which would provide an additional year to ensure that the Act is implemented with the safety of our schoolchildren and school employees foremost in mind.

Mr. Chairman, as you probably are aware, on February 2, 1988, I joined my colleague from Ohio, Mr. Oxley, in introducing similar legislation. As with your legislation, H.R. 3893 would ensure the safe and complete inspection and response actions regarding asbestos-containing material in our nation's schools by extending certain statutory deadlines in the 1986 Asbestos Hazard Emergency Response Act (AHERA).

The extension of the deadlines is necessary to ensure that the goal of AHERA is met. The goal of AHERA is to ensure -- finally -- that school buildings have been appropriately and adequately inspected for asbestos and that the plans for the management of asbestos hopefully will eliminate -- not increase -- the hazard presented by asbestos. The Act stressed that this be accomplished in a safe and complete manner.

The Asbestos Hazard Emergency Response Act (AHERA), which I fully supported, was signed into law on October 22, 1986 (P.L. 99-519). The law requires the Environmental Protection Agency to issue rules requiring inspection and periodic reinspection of schools for asbestos-containing material, development of school management plans, and response actions for hazardous materials in schools.

In October 1987, the EPA issued a final rule pursuant to the mandate of the Act. The law, coupled with the rule, contains four major requirements: (1) all schools must be inspected by accredited inspectors to identify and inventory the location of all asbestos-containing materials; (2) plans for repair, encapsulation, enclosure or removal of all asbestos-containing materials must be submitted to the Governors by October 1988 and implementation begun by July 1989; (3) all asbestos-containing materials not removed must be reinspected every six months; and

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(4) states must establish accreditation programs for persons involved with the inspections.

AHERA's statutory timetable is causing problems in school districts around the country, and particularly in my state of Texas, which has 1,065 public school districts and more than 900 private schools that are subject to the requirements of the Act. School officials are seriously concerned that the too tight timeframe will cause inspections and response actions to be performed in an unsafe and incomplete manner, which is directly contrary to the Act's goal.

Let me use Texas as an example. The regulations issued by the EPA in October 1987 correctly assume that many school districts will want to self-manage at least part of the assessment and management plan process. Pursuant to this assumption, EPA has designated approved training programs to accredit asbestos inspector and management planning personnel. However, only two such training schools have been approved in Texas -- far too few to train personnel from 1,065 public school districts and 900 private schools!

Although additional classes have been scheduled, the two programs can handle no more than one-third of those personnel who may require accredited asbestos inspector training. Therefore, it is not possible for the majority of public schools districts in Texas to self-manage the process within the timeframe set by AHERA.

This then presents further problems. Schools districts whose budgets were set for 1988 prior to the issuance of final regulations, find themselves in the no-win situation of accepting inflated contracting costs (due to the high demand caused by law) or facing fines and penalties under AHERA. For example, I heard of one situation in Texas where a small district containing five buildings requiring inspection received a bid from a contractor for $125,000. When the school district official checked with others knowledgeable, he was told that the cost would probably be about $5,000 if the district could self-manage the process! Obviously, this is not a small difference. On the other hand, failure to comply with the deadlines or other aspects of the regulations can result in fines of up to $5,000 per day. Criminal charges also may be filed against school district officials.

Mr. Chairman, AHERA requires that asbestos samples obtained during inspection be analyzed by EPA-approved laboratories. Texas school districts own more than 25,000 buildings, containing more than 400 million square feet of space. The Texas Department of Health has estimated that analysis would have to be performed on about 90,000 samples. One survey has shown that Texas currently has a sample processing capacity of about 10,000 samples per month. Due to the statutory timetable, there may be only about four months during

which sampling will occur. Due to processing limitations, there could be a sampling backlog of 50,000 unprocessed samples by August 1, 1988. It would then be extremely difficult for school districts to develop final management plans by October 12, 1988.

Additionally, this backlog would not be evenly distributed among laboratories. Laboratory fees range from $16 to $45 per sample for the same type of analysis. The lowest fee is charged by the Texas Department of Health (TDH). The next lowest fee charged by a private lab is $18 per sample. Certainly school districts must minimize cost wherever possible. TDH believes it could keep its fee low if there were time to increase its capacity. This also would stimulate competition, resulting in less discrepancy in fees.

Mr. Chairman, according to TDH, a laboratory technician cannot analyze more than twelve samples per day without possibly incurring eye strain. However, in the survey mentioned earlier, some laboratories said they could deliver 80 sample analyses per day per person. Certainly such a dramatic increase in the number of analyses performed is not in the best interests of the lab technicians. Nor is it in the best interests of the districts whose samples would be analyzed by these labs, for more asbestos could go undetected as volume increases beyond reasonable levels.

Finally, Mr. Chairman, in Texas the Department of Health is designated as the reviewer of management plans. Under the law, the TDH will have 90 days to disapprove a plan. If TDH misses that 90-day cut-off, the plan is automatically approved. With 1,065 plans to approve, it is highly likely that some plans will not be reviewed within the 90 days, therefore allowing inadequate plans to be approved.

Mr. Chairman, the situations I have outlined are contrary to the purpose of the Asbestos Hazard Emergency Response Act, which was the establishment of federal regulations which require inspection for asbestos-containing material and implementation of appropriate response actions with respect to asbestos-containing material in the nation's schools in a safe and complete manner.

Mr. Chairman, again I thank you for this opportunity to be heard on the problems associated with the implementation of the Asbestos Hazard Emergency Response Act in Texas. I look forward to working with you, as well as with my colleagues in the House, to ensure that hazards in schools are managed in a safe and complete manner.

Thank you, Mr. Chairman.

TEXAS ASSOCIATION OF SCHOOL BOARDS
POST OFFICE BOX 400 · AUSTIN, TEXAS 78767 · 512/476-9116

March 3, 1988

The Honorable Jack Fields
U. S. House of Representatives
Washington, D. C. 20515

Dear Representative Fields:

On behalf of the Texas Association of School Boards (TASB) I want to thank you for co-sponsoring HR 3893, a bill that would extend by 12 months the deadlines in the Asbestos Hazard Emergency Response Act of 1986 (AHERA).

Many Texas school districts have not begun inspections of their buildings for asbestos. Many of these districts simply cannot secure competent commercial help, others are unable to gain access for their staffs into EPA approved inspection training programs. Predictably, this can lead to hasty inspections that overlook areas containing asbestos, or worse, that accidentally release asbestos fibers into classrooms or other areas.

HR 3893 would greatly alleviate these problems and to date, nearly 60 of your colleagues have joined you in co-sponsoring this bill. However, many members of our Texas delegation have not joined your leadership on this issue. I hope that you will make each of these members aware of your concerns about the AHERA deadlines and urge them to join you in supporting HR 3893.

Thank you again for your efforts in behalf of Texas public school districts.

Sincerely,

Janis Petronis
President

JP:mr

The Lima City Schools

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DR. PAUL L. KIMMELMAN, SUPERINTENDENT OF SCHOOLS
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MARY F. JOHNSON, TREASURER

JACK L. SAINE, ASSISTANT SUPERINTENDENT FOR PUPIL PERSONNEL SERVICES
JAMES N. GEORGE, ASSISTANT SUPERINTENDENT FOR EDUCATIONAL PERSONNEL

February 22, 1988

Senator Robert T. Stafford
133 Hart Building
Washington, DC 20510

Dear Senator Stafford:

I am writing to you with the hope that you will consider the legislation extending the deadline for compliance with the AHERA regulations introduced by Congressman Michael Oxley. The Lima, Ohio, city school district encouraged Congressman Oxley to introduce this legislation because of the many difficulties encountered in honestly attempting to implement the new requirements by the mandated deadline.

Our position in supporting the extension of the deadline is in no way an effort to avoid complying with the intent of Congress, nor a failure to recognize the potential dangers that asbestos poses to occupants of public school buildings. We are, however, extremely concerned not only with our inability to meet the specified deadline, but with the potential inability and pressure tactics being applied by businesses that can assist schools with AHERA compliance.

We would respectfully request that you consider several problems that we have encountered in the Lima, Ohio, school district. Please note that the district has been inspected by EPA representatives twice and in both instances told by EPA representatives that it has successfully encapsulated all asbestos and therefore, not eligible for any of the previous funds that were awarded to schools for removal. The cost for removing asbestos in the district would be $5.5 million, up from the previous $3 million estimate two years ago.

Further, the Lima City School District is an urban school district with 17 buildings, 14 containing asbestos. The Lima City School District is one of the poorest school districts in the state of Ohio and has approximately 50% of its students on free and reduced price lunches.

Some of the problems that we have encountered when attempting to comply with AHERA are as follows:

1. The period of time that elapsed from the passage of AHERA legislation and the publication of rules for implementation, significantly reduced the amount of time districts had to develop a strategy to implement the AHERA regulations.

2. The publication of AHERA regulations in many instances took place after school districts adopted budgets and/or appropriation measures. In our particular instance, the money for these projects was not appropriated and therefore it is not available until the next fiscal year unless we were to consider taking funds from educational programs already planned.

3. Many businesses are pressuring school districts into rapidly signing agreements because of the relatively short period of time remaining to implement an asbestos plan. Already we have had estimates from reliable businesses that range from $60,000 to $140,000 for the same work. By extending the deadline, we will be able to carefully review each of these proposals and in many instances, reduce the cost of the proposal by allowing more time for the business to begin working in our school district. It is unfair to penalize school districts and reward businesses when the "window period" for quotations is unreasonably brief.

4. Currently there are not enough credited inspectors or training programs available. The extension of the deadline will enable us to properly train several representatives from our district who will then be able to maintain an appropriate ongoing inspection process.

5. It is also our hope that by extending the deadline, a poor urban school district such as Lima will have additional time to request funds to assist with AHERA compliance. This is an extremely costly project and regardless of whether the district expends $60,000 or $140,000 for the project, it is apparent that educational programs will receive less funding in order to pay for the AHERA plan.

6. It would appear that there is a broad-based support throughout the United States for extension of the deadline. Your effort to address the asbestos problem in public schools is applauded, however if such effort places an unreasonable responsibility on

public school officials, some form of a compromise should be deemed reasonable. We are not, as previously stated, attempting to avoid our responsibility, only requesting additional time to do a better and more efficient job of complying with the regulations.

I sincerely hope that you will consider our position and vote to extend the deadline.

Sincerely,

Dr. Paul Kimmelman
Superintendent of Schools

pn

cc: Congressman Michael Oxley
Virginia Vertiz, AASA

STATEMENT OF
JOHN A. MOORE
ASSISTANT ADMINISTRATOR
OFFICE OF PESTICIDES AND TOXIC SUBSTANCES
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
SUBCOMMITTEE ON HAZARDOUS WASTES AND TOXIC SUBSTANCES
AND THE
SUBCOMMITTEE ON SUPERFUND AND ENVIRONMENTAL OVERSIGHT
OF THE
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE

March 15, 1988

Thank you, Mr. Chairman and Members of the Subcommittees, for this opportunity to bring you up to date on the Environmental Protection Agency's (EPA) efforts to implement the Asbestos Hazard Emergency Response Act of 1986, or AHERA.

As I have said in previous testimony on this subject, Mr. Chairman, the goals of EPA and these Subcommittees regarding asbestos are identical: to minimize any unreasonable risks associated with inhalation of asbestos by the public, whether it be in school buildings or in public and commercial buildings. EPA's program is designed so that regulatory efforts, technical and financial assistance to states and schools, and enforcement activities when necessary complement each other and are coordinated to reduce unreasonable asbestos exposure. The Agency's plan to realize this goal is to emphasize strong technical assistance activities, and active enforcement of existing EPA rules. This program best accommodates the practical reality that decisions on asbestos are best made at the local level, where actual site conditions can be evaluated on a case-by-case basis.

As you know, AHERA required EPA to carry out several major activities, including:

-- First, to develop a comprehensive regulatory framework of inspection, management planning, and operations and maintenance activities, as well as appropriate abatement responses, to control asbestos-containing materials in the nation's schools;

-- Second, to issue a model accreditation plan to provide for training and accreditation either through state-administered programs or EPA-approved training courses for persons who inspect school buildings, develop management plans, or design or conduct response actions.

-- And third, to conduct a study to determine the extent of danger to human health posed by asbestos in public and commercial buildings and the means to respond to any such danger. Among other things, the study was to address specifically the question of whether public and commercial buildings should be subject to the same inspection and response actions that AHERA required for school buildings.

In my testimony today, Mr. Chairman, I want to begin by describing the key findings and recommendations of our asbestos-in-buildings study, which was submitted to Congress on February 26, 1988.

I will then outline our progress to date in implementing the AHERA schools program, including our efforts to increase the number of trained, accredited inspectors, management planners and asbestos abatement personnel available to carry out the program. I will also touch on the progress made by Federal agencies to develop inspection

and management plans to control asbestos in Federal buildings, and I will conclude with a brief discussion of the pros and cons of using an "acceptable level" standard to control public exposure to asbestos.

The Asbestos-in-Buildings Report

As Administrator Thomas noted in his letter accompanying the asbestos-in-buildings report, none of us was surprised when our study found that friable asbestos-containing material can be found in a substantial number of the 3.6 million public and commercial buildings in this country.

We estimate that about one-fifth of the total, or some 733,000 buildings, contain friable asbestos. We also estimate that about 501,000 buildings, or 14 percent of the total number, contain at least some damaged asbestos, and about 317,000, or nine percent, contain significantly damaged material. The significantly damaged asbestos is found primarily in nonpublic building areas, such as boiler and machinery rooms, where the risk from asbestos exposures would be limited primarily to service and maintenance workers. It is our view, Mr. Chairman, that these findings represent a potential health hazard which deserves our careful attention.

EPA's Approach to the Study

Before I go into further detail on our study's findings and their implications, Mr. Chairman, let me briefly describe the approach we took to address the issues specified in Section 213 of AHERA. Our basic objective was to provide Congress with the best information available and the most thoughtful analysis we could

bring to bear in the amount of time provided by the law. The report begins by assessing the scientific facts and uncertainties which characterize the degree of risk associated with asbestos in public and commercial buildings. It then goes on to address risk management options to reduce these risks.

Our study consisted of the following elements:

1) We reviewed and reanalyzed data previously collected (but not released) in a 1984 national survey of asbestos-containing materials in public and commercial buildings. The survey, which derived estimates from a statistically valid sample of a population of some 3.6 million buildings, focused on the presence and condition of asbestos in the nation's buildings.

2) We conducted a study of airborne asbestos levels in 43 Federal buildings, the results of which I will discuss shortly. The air monitoring study was conducted in 1987.

3) We convened a series of workshops with building owners, managers, investors, abatement contractors, State and local officials, and Federal building managers involved in asbestos management. We asked them about their problems in dealing with asbestos and how EPA could help.

4) We analyzed EPA's experience with its school asbestos and technical assistance programs, which date back to 1979. We also drew on information on buildings provided to us by the affected public during the development of the new AHERA schools rule.

5) Finally, we assessed the feasibility of alternate risk reduction scenarios, estimated risks and costs associated with these approaches (to the extent possible), and examined the key public policy considerations involved with each of them.

Risk Assessment Findings

In order to evaluate the degree of risk from the presence of asbestos in public and commercial buildings, it was necessary for us to examine two major factors: the inherent human health hazard associated with asbestos, and the extent of human exposure to dangerous asbestos fibers. I do not need to remind these Sub-committees of the severity of asbestos as a human health hazard; studies of both laboratory animals and of asbestos workers and their families have clearly established that several life-threatening diseases, such as lung cancer, asbestosis and mesothelioma, can be caused by exposure to airborne asbestos.

With the hazard case clearly established, then, our major challenge was to attempt to determine the likelihood that people will actually be exposed to and breathe asbestos fibers in public and commercial buildings. To do this, we examined four indicators of possible exposure:

1) The presence of asbestos, summarized as to the amount and type of building material;

2) The condition of the asbestos;

3) The estimated airborne asbestos concentrations; and

4) The location of the asbestos.

Let me describe our findings for each of those indicators.

First, to measure the presence of asbestos in public and commercial buildings, we looked at our 1984 national survey and determined that friable asbestos was estimated to be in:

-- 59 percent of the large residential apartment buildings in the survey population;

-- 39 percent of Federal buildings; and

-- 16 percent of commercial buildings.

This last figure, 16 percent of commercial buildings, can be somewhat misleading in that commercial buildings comprised the majority of buildings in the survey population. In terms of absolute numbers, the number of commercial buildings with asbestos was 511,000.

By comparison, we estimate that 35 percent of all schools contain friable asbestos materials, as opposed to 20 percent among sampled public and commercial buildings. We also believe, based upon our study, that there is on average more asbestos per building in schools than in public and commercial buildings.

I want to emphasize, Mr. Chairman, that it is not the mere presence of asbestos which poses a health hazard; the true hazard is presented by damage to and disturbance of that asbestos releasing fibers into the air, which people may inhale. Therefore we need to look at additional indicators of exposure besides presence.

The condition of the asbestos-containing material in the 3.6 million public and commercial buildings is one of those indicators. We found that of the 733,000 buildings with friable asbestos:

-- 501,000 buildings contained at least some damaged materials; and

-- 317,000 buildings have some significantly damaged friable asbestos.

In other words, although we estimate that friable asbestos is found in only one of five buildings, we suspect that 75 percent of the buildings with friable asbestos have some damaged material, and half have some material that is significantly damaged.

We also believe significant damage to friable asbestos is more common in commercial buildings than in Federal or residential apartment buildings. In addition, the incidence and severity of damage to asbestos in thermal system insulation (TSI) appears greater than to surfacing asbestos -- the materials on ceilings and walls (13 percent damage to TSI, compared to only two percent for surfacing materials).

Next, we looked at airborne asbestos concentrations. We examined the available data, which unfortunately are quite limited, as analyzed by the most advanced electron microscopy technique, known as the Transmission Electron Microscopy (TEM) direct method.

These data included information from 94 public and commercial buildings from four studies -- all but one conducted outside the United States -- and from 41 school buildings from five studies. The data on the 94 non-school buildings included data from a 1987 EPA study of prevailing air levels in 43 Federal buildings located in six cities across the country.

The study's interim report on airborne concentrations indicates that:

-- Mean fiber concentrations in these buildings are very low. Even including areas with significantly damaged asbestos, the mean level measured only 0.00073 fibers per cubic centimeter (f/cc) by TEM; and

-- Preliminary results appear to show no difference between average levels found in buildings with asbestos and outdoor ambient levels, when compared at the 0.05 level of statistical significance.

EPA is now completing a peer review of the interim report on concentrations in Federal buildings. While these data may provide an early indication of prevalent levels of asbestos which may be found in buildings, they are insufficient to support generalizations about Federal buildings, the total population of public and commercial buildings or the relative airborne concentrations in schools as compared with public and commercial buildings.

The final indicator of asbestos exposure which we examined was the location of the friable asbestos. We found that although it appears that asbestos is present in roughly the same number of buildings in both service areas and public areas, it also appears that damage is greater in the service (nonpublic) areas. This and other information in the report seems to suggest that service workers, on the whole, may be at greater risk than other building occupants due to the areas they frequent and their activities; and that thermal system insulation may be a major exposure source.

To summarize our analysis of the exposure data, Mr. Chairman, we estimate that asbestos-containing material is present in 20 percent of the public and commercial buildings, compared to 35 percent of the schools. Much of the material in public and commercial buildings is already damaged. Most of that damage is to thermal systems insulation and is located in non-public areas. Our analysis is also revealing in its highlighting of what we do not know about actual exposure of people to this asbestos. Specifically, our

information is highly uncertain on estimates of the number of persons exposed, the frequency or influence of episodic events which disturb asbestos, and the relative exposure levels of service workers in comparison with members of the general public. Because of these data limitations, we are unable to make quantitative conclusions or generalizations about actual exposure of people in public and commercial buildings.

As I indicated earlier, our ability to estimate risk is only as good as our exposure data. In this case, limited knowledge of exposure to airborne asbestos fibers essentially precludes any reliable estimates of risk, particularly in absolute numbers.

I do want to mention, however, that a proportional risk model developed by the Agency suggests that the elimination of asbestos exposure in schools might significantly reduce residual risk for populations later exposed in public and commercial buildings -- assuming equal or higher exposures in schools and excluding the effects of residential exposure. This is due to the elimination of early exposure in schools and the long latency period for mesothelioma. This finding affirms the wisdom of proceeding expeditiously with the implementation of the AHERA schools rule.

Let me make one final comment about risk, Mr. Chairman. We believe risk to service workers should be considered separately from potential risk to other building occupants. Service and maintenance personnel may come in contact with asbestos-containing materials more frequently than other building occupants. This places greater importance on the effective implementation of the OSHA and other rules and activities designed to provide these workers protection and currently in operation.

The Framework for Risk Reduction

I would like to turn now, Mr. Chairman, to the question of how we can best manage the human health risk posed by the presence of asbestos in public and commercial buildings. In other words, given what we know -- and do not know -- what should our response to this problem be?

We have concluded that a major Federal regulatory program for public and commercial buildings would not be prudent at this time and likely would have the opposite effect of what was desired. In addition to our lack of data indicating a significant risk, several factors related to the present situation bear on this decision:

First, removal of asbestos from buildings, although attractive in concept, is not always the best alternative from a public health perspective. In fact, improperly performed removal of asbestos can result in a very high level of exposure for the occupants of that building and perhaps others as well.

Response actions short of removal, such as encapsulation, and good maintenance procedures during the life of the building can be safer in some circumstances.

Second, if we are not careful we will stimulate more asbestos removal actions in public and commercial buildings during the next few years than the existing infrastructure can handle. Investors are increasingly insisting that asbestos be removed from public and commercial buildings as a condition of their sale; and as I have already indicated, unless such removals are done correctly, exposure of asbestos to the public may actually be increased. We already have

anecdotal information which leads us to believe that irresponsible and potentially dangerous removal action is taking place outside of carefully monitored programs, and we do not want to exacerbate this problem by our actions.

Third, we need to continue to place our primary focus on asbestos in schools. Our report highlights the wisdom of this priority attention. Children, since they have the longest life expectancy, would appear to incur the greatest risk from the longterm effects of exposure to asbestos.

During the next several years, AHERA school rule activities will stretch the available resources of trained and accredited inspectors, contractors and laboratories to their limits, along with the compliance assistance and enforcement capabilities of the various levels of government. A great deal of effort over the past two years has gone into implementing the AHERA schools program, and we must be very careful now not to take action which might undermine its success.

And fourth, I believe it would be foolish to embark on a large, costly new regulatory program of asbestos control without first asking -- and answering, to the extent possible -- basic questions which could significantly improve the effectiveness of our response to this problem.

We have only recently put the comprehensive AHERA schools rule into place. In the next three years, we will have much to learn from its implementation. The report also identifies a number of other studies EPA might conduct in an attempt to fill the various data gaps I have mentioned today. Some of these studies could cost

many millions of dollars to conduct on a scientifically credible basis; yet their impact on future abatement programs which carry costs estimated in the tens of billions of dollars could be profound.

Instead of an immediate regulatory program, we are recommending a three-year effort to assess and improve the quality of asbestos-related actions that are now taking place in public and commercial buildings. The proposal has four major components:

1) Enhance the nation's technical capability by providing a growing supply of trained and accredited professionals to perform inspections and abatement work; and by helping building owners and managers make the right control and abatement choices. Assistance to building owners could help shape, guide and enhance the present private sector activity. For example, identification of proper operations and maintenance activities should result in immediate risk reduction for that segment of the population which may be receiving the largest exposure -- the custodial staffs in these buildings. It may also prevent accidental damage or extensive deterioration which could expose other building occupants.

2) Focus attention on thermal system insulation asbestos, which is more prevalent in public and commercial buildings, is generally in worse condition, and is found in higher concentrations than other kinds of friable asbestos. This asbestos represents a potentially serious health hazard to the custodial and maintenance personnel who work with and around this material on a regular basis; yet it is usually easier to repair, encapsulate, or, where appropriate, remove than other asbestos-containing material.

3) Improved integration of activities to reduce imminent hazards. We believe more can be done to avoid high peak exposures associated with improper or poorly timed asbestos removal activities. The recent attention on asbestos in buildings has increased the number of removals, but it is not clear that they are being designed, supervised and conducted by trained and certified professionals. Better coordination of asbestos-related enforcement programs is needed in order to increase the effectiveness and efficiency of our existing asbestos control efforts and to address legitimate imminent hazards.

The asbestos enforcement effort under the Clean Air Act has grown steadily over the past three years, Mr. Chairman; for example, the number of NESHAPs notifications to EPA and the States went from 20,537 in Fiscal Year 1985 to 43,496 in FY 1987, and the number of NESHAPs inspections grew from 8,121 in 1985 to 17,616 in 1987. We believe this program could be made even more effective if we were to institute a field program in which notification and inspection information is regularly shared among EPA and other Federal asbestos technical assistance and enforcement programs. The NESHAP notification procedure can be utilized to provide guidance and direction on good work practices to building owners and contractors before abatement work begins.

A combination of additional Federal inspection personnel and increased emphasis in states with delegated enforcement programs could dramatically improve compliance with existing regulations. Limited increases in Regional staff devoted to coordinating programs and delivering technical assistance and guidance to building owners and other affected parties would provide the critical mass to eliminate duplication and inefficiencies.

4) Objectively assess the effectiveness of the AHERA school rules and other current activities. About 35,000 school buildings contain friable asbestos, as compared to more than 730,000 public and commercial buildings. Federal agencies, states, localities and the private sector are already active in the assessment and control of asbestos in many of these buildings. We need to be sure that the Federal government's intervention in society on behalf of public and commercial buildings is a sound one based on an objective assessment of activities which have only recently begun.

EPA, therefore, is recommending that studies be conducted on a priority basis, focused on the effectiveness of the AHERA school rule, and the level and effectiveness of the current activities of the states and private sector. The nation's study and research program should be proportional to the magnitude of the public investment in controlling the problem which is contemplated, especially when so little is actually known, as our report indicates.

Mr. Chairman, these recommendations should not be interpreted as ruling out an inspection rule or even greater Federal regulation of public and commercial buildings at some time in the future. This is a question we should address in about three years, after we have had more experience with the AHERA school rule, have dealt with the large surge of demand for trained professionals, and have completed the studies I have just outlined.

Federal Agency Programs

You asked that I address the issue of Federal agency participation in asbestos control efforts, Mr. Chairman. I am pleased to report that the building managers for several Federal agencies have established asbestos control programs. Several of these programs, including those of the General Services Administration and the Veterans Administration, were developed with EPA participation.

The U.S. Postal Service has been one of the more active agencies in this area. The Service instituted a formal asbestos abatement program in 1978, and since 1980 it has identified asbestos in 1,500 of the 35,000 buildings the Service owns or leases. The Postal Service has spent $50 million on asbestos abatement work in about 800 of these buildings since 1978.

The General Services Administration has a regular asbestos inspection program and has spent $35 million since 1980 for asbestos abatement work. And the Veterans Administration, which operates 172 medical centers across the country, has spent at least $100 million on asbestos abatement work since 1979.

To increase Federal agency involvement in asbestos abatement activities, EPA convened a group of Federal government building managers on December 16 of last year and asked them to comment on seven issues: asbestos risks; building occupant awareness of asbestos-containing material; occupant responses and initiatives; corrective actions; problems with contractors; the cost of abatement;

and familarity with EPA guidance documents. While not all of their buildings had been inspected and tested for asbestos, the managers' estimates of the numbers of buildings in their agencies containing asbestos ranged from seven percent to 97 percent. The managers were generally familiar with EPA's asbestos guidance documents and found them useful, and they suggested that an abatement approach that provides guidance on inspection and assessment, allowing managers flexibility to deal with unique circumstances, would be preferable to strict regulations.

Concerns of the Financial Community

You also asked about the concerns of the financial community with respect to the presence of asbestos in public buildings, Mr. Chairman. Many of those concerns were discussed during a workshop convened by EPA last year to gather information for our asbestos-in-buildings report. The panelists selected for the workshop represented three groups: owners and managers of commercial buildings; mortgage bankers and investors; and asbestos consultants and contractors.

The panelists generally agreed that different approaches to managing asbestos-containing material were advisable in commercial buildings, in public buildings, and in schools; and that a regulatory program such as the AHERA schools rule might not be appropriate for commercial or public buildings. Each of the three groups supported training and certification requirements for inspectors, consultants, and contractors, and emphasized the need for uniformity in these programs.

Both the lenders (mortgage bankers and investors) and a group representing state and local government officials, who participated in a second workshop, indicated that inspections and asbestos removals are currently taking place in response to market pressures. For example, information about the presence of asbestos-containing materials is often required during negotiations for building sales and leases. Owners expressed concern over price reductions if asbestos is present. Some state officials indicated that their states will not enter into new leases for additional space which contains asbestos, although they are more flexible about lease renewals for existing space.

The building owners said they prefer regulations that afford them maximum flexibility to address asbestos problems. Lenders, on the other hand, preferred uniform, unambiguous regulations.

Owners, lenders, and state and local government officials alike were concerned about the economic impact of any new regulations. Among the primary costs they mentioned are inspection, planning, training, operations and maintenance, removal, monitoring, and enforcement. Secondary costs of concern include the reduced value of commercial buildings, loss of residential housing, business interruption, and relocation.

The owners and lenders emphasized that they are actively managing asbestos, but primarily in response to market forces. They expressed the belief that tenants are reacting to a perceived risk that may be overstated, and requested that EPA establish safety standards consistent with scientific findings, and communicate these standards and the related risks to the public in a clear and comprehensible manner.

Implementation of AHERA Schools Rule

Mr. Chairman, we at EPA fully recognize the challenges the nation faces with respect to training and accrediting sufficient numbers of inspectors and planners to meet the demands being placed on our school districts by AHERA. In response to that challenge, EPA has initiated a number of programs to enhance the infrastructure of asbestos professionals, starting in 1985 with special training programs for asbestos abatement contractors and workers and establishment of five Asbestos Information and Training Centers and three satellite centers to facilitate training in proper asbestos abatement techniques.

Since completing development of the AHERA regulations, EPA has worked to provide an adequate number of EPA-approved training courses to supplement the AHERA-required state accreditation programs. The immediate need for the AHERA program is to accredit inspectors and management planners in order to meet the October 1988 deadline for these activities; that is why we have been focused on establishing a training and accreditation system. In conjunction with the announcement of the AHERA final rule, EPA published a list of nine approved courses for accreditation of inspectors, management planners, contractors and workers. A second list was published on February 16 of this year which added 14 approved courses to the accreditation effort. Since the February list was published, an additional 21 courses have been reviewed and approved by EPA staff, for a total of 44 courses nationwide.

As of February 1, some 5,180 AHERA-accredited inspectors and 4,800 management planners had received training from an EPA-approved course. We estimate that the 44 courses approved so far, training 50 persons a month, would produce an additional 10,000 inspectors and management planners by the end of May 1988; and an additional 16,000 inspectors and management planners by the end of September, for a total of 21,000 inspectors and management planners nationwide.

It is ultimately the States, however, and not EPA, that have primary responsibility for accreditation under AHERA. To assist the States in meeting these requirements, we have awarded cooperative agreements totaling more than $1 million to 17 states to support the development of State training and accreditation programs. These grants should produce hundreds of additional accredited inspectors and management planners, many of whom are school officials who will serve in that capacity, as permitted in the AHERA regulations.

In addition, the Agency developed the Asbestos Inspection and Management Plan Assistance Program, which provided $5 million in October 1987 in grants to States for inspection and management plan assistance. These funds are used to reimburse local education agencies for hiring inspectors and/or management planners; to purchase the services of inspectors and planners; or to pay accredited state employees to conduct inspections. A second round of funds totaling $15 million will be distributed under this program in April.

In addition to focusing on the accreditation of inspectors and management planners, EPA has taken many steps to inform schools about AHERA requirements. In mid-November we completed a mailing

to all 40,000 local education agencies in the nation to provide them with a copy of the regulations and the first list of approved accreditation courses. In mid-December, another mailing to the LEAs was conducted, this time to provide an alert about immediately-effective provisions of the AHERA regulations. A third mailing, completed at the end of February, provided all LEAs with a newly-developed guidance document which provides easy-to-understand steps and checklists to help schools meet AHERA requirements. This mailing also included the October and February lists of approved accreditation courses. On April 14, EPA will provide a national teleconference to help school officials understand the AHERA requirements. In addition, EPA's Regional Asbestos Coordinators have conducted numerous seminars in many states to explain AHERA requirements to school officials.

Degree of Compliance

It is too early in the program, Mr. Chairman, to assess the degree to which AHERA is being complied with by the States and local school boards. While a few provisions of AHERA became effective on December 14, 1987 -- including the requirement to use accredited persons for the design and conduct of response actions -- most provisions are not effective or enforceable until October 12, 1988, when the local education agencies must submit their management plans to their States.

Once those provisions are in effect, EPA intends to mount a vigorous inspection program to assess contractor compliance and school district compliance. We will also follow up on remaining

violation cases for the 1982 school rule. We have already provided interim guidance to the EPA Regions and States on inspection targeting and enforcement responses for violations of the immediately effective provisions of AHERA. We intend to use public outreach, inspections, and a strong enforcement program to achieve compliance.

The Efficacy of an "Acceptable Level" Standard

That brings me to my final point, Mr. Chairman -- the question of whether EPA should adopt a numeric standard for asbestos exposure. Under this approach, the Agency would assess the risks associated with exposure to asbestos-containing materials in buildings, establish acceptable levels of exposure, require periodic monitoring, and identify proper engineering controls which would be implemented if those limits were exceeded.

This approach does not appear to be practical at this time to address the problem of asbestos in buildings, for the following reasons:

First, some exposure to asbestos may result from episodic events, such as repair work or the accidental jarring of the asbestos by activities inside or outside the building. In order for air monitoring to reflect these episodes, it must continue long enough to record a "representative" period of time during which such episodes might occur.

Since these episodes may vary widely and are difficult to predict, the representative period would have to cover several days, if not weeks or months. Unfortunately, EPA has insufficient

data to determine whether such episodic releases contribute significantly to total risk. In addition, current exposure levels may not be representative of future levels; asbestos-containing material can become damaged or deteriorate over time under certain circumstances, and periodic re-monitoring would be necessary to insure that levels do not increase over time.

Second, the most accurate monitoring would be by the TEM direct method, which I mentioned earlier in my statement -- a very expensive process. We estimate the cost of a one-time TEM monitoring program for all buildings containing friable asbestos to be more than $10 billion; and a one-time monitoring program would not satisfy the need to protect against deteriorating asbestos-containing material which might release fibers at some point in the future.

Because of these constraints, EPA traditionally has relied on another approach to determine when abatement and removal of asbestos is appropriate: laboratory identification of asbestos-containing material and visual assessment of its condition by trained professionals. Visual assessment has its drawbacks, too, since it is a subjective process; even among trained raters, inconsistent evaluations can occur. Therefore, as new techniques are developed for monitoring and determining the likelihood of exposure, EPA will continue to look for ways to advance the state of the art.

At the present time, however, we do not believe the establishment of a numeric standard and monitoring can take the place of visual inspections to determine if remedial actions are needed to control

asbestos in buildings. The results of our air monitoring study in Federal buildings, while not conclusive, should draw our attention to the need to learn more about the prevailing airborne asbestos levels in buildings. Further investigation of this question is an example of the kind of additional study and assessment described in our public building study recommendations.

To my way of thinking, such a study could be done cooperatively between the public and private sectors, with principal funding being provided by the private sector and the studies themselves being conducted by a third party.

That concludes my prepared statement, Mr. Chairman. I would be happy to answer any questions the Subcommittees may have.

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TESTIMONY OF

THE NATIONAL PARENT TEACHER ASSOCIATION

ON

IMPLEMENTATION OF THE

ASBESTOS HAZARD EMERGENCY RESPONSE ACT

BEFORE THE

JOINT HEARING OF THE

HAZARDOUS WASTE AND TOXIC SUBSTANCES

AND THE

SUPERFUND AND ENVIRONMENTAL OVERSIGHT

SUBCOMMITTEES OF THE

ENVIRONMENT AND PUBLIC WORKS COMMITTEE

U.S. SENATE

PRESENTED BY

ANN LYNCH

FIRST VICE PRESIDENT OF THE NATIONAL PTA

MARCH 15, 1988

Chairman Baucus and Chairman Lautenberg, and distinguished members of the Senate Subcommittees on Hazardous Wastes and Toxic Substances and Superfund and Environmental Oversight, I am Ann Lynch, and I currently serve as First Vice President of the National PTA. I have also served as the Vice President for Leadership Services, National PTA Treasurer, and as the State President of the Nevada PTA from 1980 to 1982.

On behalf of the 6.1 million volunteer members of the National PTA--parents, teachers and other concerned citizens from over 25,000 local units around the country and in overseas schools--I thank you for this invitation to testify before the Subcommittees regarding the problem of asbestos in our schools. Since 1897, when the National PTA was formed, our organization has worked to secure laws for the protection of the health and welfare of our nation's children and youth. The National PTA has actively sought Congressional action to protect children from asbestos hazards in schools since the 1970's when friable asbestos was first widely recognized as a health threat. Most recently, we have worked closely with Congress on the Asbestos Hazard Emergency Response Act (AHERA) and participated in the regulatory negotiation process for that law. I come before you today to urge Congress to adhere to its commitment to ridding our nation's schools of the severe health threat caused by asbestos.

In my remarks today I will discuss the history of the federal role regarding asbestos in the schools, the importance of the AHERA legislation, and some recommendations that the National PTA believes will assist school districts in meeting the AHERA deadlines.

Before I begin, I must make our position clear. The National PTA is opposed to extending the AHERA deadlines for inspecting schools and developing management plans and for implementing the management plans. Millions of children are being exposed to potentially health-threatening and life-threatening conditions in schools where asbestos fibers are present. We cannot wait any longer.

As I am certain you all know, because of its strength, fire proofing, insulating, acoustical, and decorative properties, asbestos was used frequently in schools built or renovated between 1946 and 1972. In the early 1970's, it was discovered that asbestos-containing materials which are friable (readily crumbled by hand pressure) release invisible asbestos fibers. These tiny fibers, when inhaled, may cause asbestosis (a debilitating lung disease), mesothelioma (a rare cancer of the chest and abdominal lining) and lung cancer.

The Environmental Protection Agency (EPA) and the scientific community agree that no safe level of asbestos exposure has been demonstrated; thus, any exposure could pose a risk of disease and cancer. Since the symptoms of asbestosis, mesothelioma, and lung cancer do not appear until 15 to 40 years after first exposure, children, with their longer remaining

lifespan, are at greater risk of developing these diseases.

Much of the friable asbestos-containing material in schools is found in wrapped pipe insulation, which creates a significant health risk to both maintenance personnel and students, since airborne asbestos fibers may travel throughout the entire school building. In addition, friable asbestos is often found in areas of high student exposure. A January 1984 survey, conducted under contract from EPA, found that approximately 15 million children are attending classes in 31,000 schools in which asbestos fibers are present.

Since March of 1971, when EPA listed asbestos as a hazardous air pollutant under the Clean Air Act, EPA has struggled with the asbestos problem. In 1973, EPA banned the spraying of asbestos-containing insulation on buildings, and in 1978 EPA extended that ban to other construction uses. In 1979, the Agency took action regarding asbestos in the schools when it initiated the voluntary Technical Assistance Program (TAP). Through TAP, EPA published and distributed several documents to assist schools in identifying and abating asbestos hazards. Although TAP provided valuable aid to those school districts that were already interested in taking care of their asbestos problem, it provided no incentive or enforcement mechanism for all schools to take similar action. EPA assumed that school districts, in partnership with parents and the community, would take voluntary action to protect the health of children.

In September of 1980, EPA published the first of a planned two-part

proposed rule regarding asbestos in schools. The first part of the rule would have required identification of asbestos hazards in the schools and notification of parents and employees regarding any asbestos hazards found. The second part of the rule would have required abatement of school asbestos hazards. In 1981, when the new Administration took office, publication of the final rule was postponed and the second part of the rule was deemed inappropriate federal interference and was permanently shelved.

Finally, in May of 1982, EPA was able to publish the final Asbestos in Schools Identification and Notification Rule. This rule was almost identical to the 1980 proposed rule and stipulated that, by June 28, 1983, school districts were required to have inspected all school buildings for friable materials; sampled all friable materials; analyzed samples using polarized light microscopy; notified employees and parents and PTAs if asbestos was found; and keep records at the school district.

A January 1984 EPA survey, evaluating the effects of the rule, found that 98 percent of public schools had been inspected for friable asbestos. However, the survey also found wiiespread noncompliance among schools. The study showed that less than 10 percent of all local education agencies (LEAs) had complied with all aspects of the rule. In fact, by the time of the survey, over 66 percent of the LEAs had not even complied with most aspects of the rule. To have complied with most aspects of the rule, a school need not have used the designated sampling and analysis techniques or the specified EPA forms for employee and parent notification and for

record keeping. Further, of those LEAs with at least one school with asbestos-containing materials that had completed inspections, 79 percent did not comply with most aspects of the rule by January of 1984. Of most importance to the National PTA was the survey's finding that over 25 percent of the schools with friable asbestos-containing materials did not notify parents.

The need for comprehensive legislation that addressed asbestos-containing materials in our nation's schools was spurred on by the lack of total compliance with the 1984 rule. Early in 1986, Congress began working on the Asbestos Hazard Emergency Response Act (AHERA). AHERA (P.L. 99-519) required the Environmental Protection Agency to promulgate regulations which mandate proper inspections of schools for asbestos-containing materials, and the proper response action for any asbestos hazard found. Under AHERA, states are required to develop and implement asbestos contractor certification plans in order to ensure that proper inspection and response actions are followed. Finally, using certified individuals, LEAs are required to develop and implement asbestos management plans, which provide for the proper response action for asbestos hazards, and for periodic reinspection and maintenance activities with regard to any asbestos that remains in the school. The management plan must be available to the public and the school district must provide written notification to parent, teacher and employee organizations of the availability of the plan.

With the enactment of AHERA, the National PTA believed that the asbestos

problem in our schools would finally be taken care of in a comprehensive and safe manner. Now, with seven months to go until the October deadline, legislation has been introduced extending the deadlines. Court cases have also been filed challenging the AHERA regulations. The National PTA stands firmly behind AHERA and the AHERA regulations. America's school children cannot afford another delay; seventeen years have been long enough.

You have heard, today, from the proponents of the deadline extension legislation. These proponents contend that there are many obstacles to meeting the October 12, 1988 deadline. In particular, they state that:

- there are not enough certified contractors to conduct the inspections and complete the management plans by the October deadline;
- enrollment in the EPA certified courses is full, so that school districts are unable to send their own personnel to the courses;
- there is no central listing of certified individuals, thereby making the job of finding a certified contractor more difficult; and
- there are not enough EPA certified laboratories to analyze asbestos samples;
- even if there were enough contractors to complete the inspections and management plans by October, many school districts would not have the funds available to finance the work.

While the National PTA does not discount the facts that our colleagues have gathered, we do question how extending the deadlines by one year or

eighteen months will solve many of the problems that they assert exist. If Congress chooses to take action on the AHERA, attention must be focused on assisting school districts in meeting the deadlines, not extending them. We suggest an approach that would include the following:

- o expansion of the number of inspector/management planner courses with priority enrollment given to school district personnel;
- o require the Environmental Protection Agency, either directly or through a contract, to maintain an ongoing list of certified inspectors and management planners and make the list available to the appropriate agency in every state that will then make the list available to school districts;
- o expansion of the number of EPA certified laboratories;
- o providing more funds (via a FY 1988 supplemental appropriation for ASHAA) to EPA technical assistance centers in order to assist school districts in meeting the October 12, 1988 deadline;
- o establishing a federal fund where school districts most in need could borrow money this year to pay for the inspections and management plan development, but would have to pay back the no-interest loan next year.

I might also add that the number of accredited inspectors and management planners is growing. During a March 10, 1988, briefing, EPA announced that as of February 1, 1988, 5,183 inspectors had been accredited. Of that amount, 4,809 inspectors have also been certified to develop management plans. The number of inspectors and management planners are expected to increase over time; EPA estimates that by September 1, 1988,

84-404 O - 4

there could be as many as 18,000 to 20,000 accredited individuals. While there is no data that indicates exactly how many inspectors and management planners are "enough", the growing numbers of accredited individuals means that school districts should not have great difficulty in finding people to do the work by the October 12, 1988 deadline. EPA also stated during the briefing that as of February, there were 42 inspector and management planner training centers. In October 1987, when the final AHERA rule was promulgated, there were 9 training centers.

While the National PTA proposes the creation of a fund to assist school districts most in need of financial aid, we would also ask that Congress fully fund the Asbestos School Hazard Abatement Act (ASHAA). The ASHAA program provides loans, and in extreme cases grants, to school districts to assist in the cost of abating asbestos. For FY 1988, $40 million was appropriated for this program, which is $10 million below the FY 1987 level. We ask that Congress fund ASHAA in FY 1989 at its authorized level of $125 million. In light of the cost associated with AHERA, the ASHAA funds become an even more vital source of assistance for school districts.

In closing, the National PTA is opposed to extending the deadlines in the AHERA program. By extending the deadlines, Congress will be sending a message to school districts that it is acceptable to continue to ignore or delay action on this serious health issue. This is not the time for foot dragging, but for increased activity. Congress, states, school districts, and parents must maintain their commitment to helping make this nation's

schools as healthful for children's bodies as they are for the children's minds.

I commend the two distinguished Chairmen and members of the subcommittees for their concern about asbestos in the schools. I thank you, again, for this opportunity to share the views of the National PTA on this crucial matter.

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TESTIMONY OF REUBEN A. GUTTMAN, ESQ.
ON BEHALF OF THE
SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO/CLC

BEFORE THE
UNITED STATES SENATE
ENVIRONMENT AND PUBLIC WORKS COMMITTEE;
HAZARDOUS WASTES AND TOXIC SUBSTANCES SUBCOMMITTEE
AND
SUPERFUND AND ENVIRONMENTAL OVERSIGHT SUBCOMMITTEE

MARCH 15, 1988

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Good Morning. My name is Reuben Guttman, and I am Counsel to the Service Employees International Union, AFL-CIO ("SEIU"). I would like to thank Chairman Baucus and this Committee for affording SEIU the opportunity to testify today. My remarks address the implementation of AHERA and EPA's recent report to Congress on asbestos in "other" (non-school) public and commercial buildings.

SUMMARY

First, I would like to address the question of whether resource limitations require legislative extension of deadlines contained in the Asbestos Hazard Emergency Response Act ("AHERA"). To the extent that the proponents of an extension of the AHERA deadlines have legitimate concerns, these concerns were raised to Congress and provided for by Congress in the enactment of AHERA itself. Sections 15 U.S.C. § 2647(c) of AHERA and 15 U.S.C. § 2615(C) of the Toxic Substances Control Act ("TSCA") expressly provide that penalties for non-compliance are not to be arbitrarily imposed. EPA is mandated to consider factors, including resource limitations, that may legitimately prevent timely compliance. AHERA does not need revision; it needs Congressional oversight to ensure that its administration is consistent with its own terms and the public interest. SEIU therefore opposes the legislation of an extension.

Second, I will address EPA's recent announcement that it will not now proceed with rulemaking for "other" (non-school) buildings.

EPA's present conclusion marks only the latest retreat from EPA's decade old commitment to comprehensive regulation of asbestos in buildings. EPA has long recognized that potentially deadly asbestos is present in untold thousands of public and commercial buildings. EPA agrees that, no less than in school buildings, maintenance workers in other buildings are particularly at risk because of their daily work in and around friable asbestos.

EPA's continued abdication of its regulatory responsibility is a tragic contradiction. On the one hand, EPA says that it cannot now engage in rulemaking because limited resources will imperil the quality of abatement, and because the costs of the program will be too large. Meanwhile, EPA's report declares that AHERA rules provide the "baseline" for voluntary action in "other" buildings, and EPA's own official "guidance" document similarly counsels "prudent" building owners to take the very actions that EPA says it will be imprudent and too costly to require by regulation.

Moreover, in claiming that the asbestos in "other buildings problem" is too pervasive and complex to permit <u>any</u> rulemaking, EPA is refusing to proceed with even a minimal requirement that building owners inspect to determine the presence and location of asbestos. While there may be debate about whether AHERA rules should be immediately applied to other public and commercial buildings, there should be no question that, until comprehensive rules are provided, workers and citizens have the right to know

that hazard exists. In the absence of an inspection requirement, building workers and others will not even have the knowledge needed to avoid creating new hazard in the interim until comprehensive protection is provided.

In an age where Federal law and policy affords workers and the public a right to know of toxic hazards in their daily life, and where inspections of school buildings have been required since 1982, it is unacceptable that there is no requirement to provide workers and others information on which they can take steps to protect themselves.

SEIU and Asbestos

SEIU represents 850,000 employees. It is the largest union representative of building service workers. In addition, SEIU represents more health care workers than any other union, is one of the largest public employee unions, and has a rapidly expanding membership of clerical employees.

As the EPA and others have long recognized, it is custodians who are the likely victims of the "peak exposures" that represent the primary source of hazard from asbestos in buildings. 1/ SEIU members include 175,000 janitors who work in schools and other public and commercial buildings. SEIU members work in basements and boiler rooms. Every day our members face actual or potential

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1/ See: Public Buildings Study at page 16: "Service Workers may encounter higher episodic exposures, particularly if their activities disturb ACM. They appear to be equally at risk, whether employed in public or commercial buildings or in schools."

contact with friable or flaking asbestos. Since our members serve on the frontline where hazard may be present at any moment, SEIU has had no recourse but to seek assurance that protective actions will not only be taken, but that they will be taken competently.

In June of 1983, SEIU released a study showing widespread noncompliance with EPA's asbestos in schools inspection regulation, and by necessary consequence, widespread failure to take needed abatement actions. 2/ In the fall of 1983, SEIU petitioned the Environmental Protection Agency to issue rules to require protective action in both schools and public and commercial buildings. 3/

2/ On June 30, 1983, the Service Employees International Union released a 32 page study entitled Asbestos in Our Schools. The study projected that some 3.2 million school children and an additional 1 million employees were in schools with known asbestos hazards. The study stressed that the federal government had no laws or regulations requiring clean-up and that an inspection rule was not being complied with and was not being enforced. See: "Survey Cites Asbestos Peril in U.S. Schools," July 1, 1983, The Cleveland Plain Dealer, p. A1; "Millions Said Endangered by Asbestos Threat," July 1, 1983, Barner-Press (Brenham, Texas): "Lax Observance of Asbestos Law Found by Union," July 1, 1983, Phoenix Republic; "Asbestos Report Delayed," July 1, 1983, Sentinel (New Haven, Conn.): July 8, 1983, "State Stalls on Asbestos, Survey Shows," Kenosha News (Kenosha, Wisc.); "Asbestos Threat Exists in LA, Union Tells EPA," July 15, 1984, San Diego Tribune.

3/ SEIU asked EPA: (1) to establish standards for determining when friable asbestos containing materials are hazardous; (2) require corrective action when friable asbestos-containing materials are determined to be hazardous; (3) establish standards for the performance of abatement activities, including standards for the protection of those performing such activities; and (4) extend the inspection and abatement requirements to other ("non-school") public and commercial buildings.

In 1984 EPA purported to grant our rulemaking petition, but failed to proceed with rulemaking. 4/ SEIU therefore sought relief from the United States District Court for the District of Columbia. In October of 1986, the Court (in Service Employees International Union v. Lee Thomas, et al., Civ. Action No. 84-790) summarily ordered EPA to initiate the rulemaking action that SEIU requested. 5/ Information discovered by SEIU in court was of significant assistance to Congress in developing the Asbestos Hazard Emergency Response Act; and the law provided the relief sought by SEIU with respect to schools. 6/

4/ Except that, as requested by SEIU, EPA acted to apply OSHA regulations governing abatement to public employees.

5/ In light of AHERA's requirement that EPA study "other buildings," the court subsequently vacated that portion of its order requiring EPA to initiate rulemaking on "other buildings." SEIU has requested that the court clarify this order. The request is pending before the court.

6/ See: Report of the Committee on Energy and Commerce on the "Asbestos Hazard Emergency Response Act of 1986." 99th Cong. 2d Sess. Report 99-763. At page 16 the Committee stated that:

> In 1984, the Service Employees International Union (SEIU) sued EPA to compel the Agency to issue comprehensive regulations dealing with the asbestos problem in the nation's schools. (citation omitted) Information developed in the SEIU lawsuit and provided to the Committee was of significant assistance in developing the legislation, which is in turn designed to provide the same relief sought in the lawsuit; issuance of adequate and appropriate EPA regulations regarding asbestos in schools.

AHERA Provides That Schools Will Not Be Required To Take Action Beyond Their Capability; AHERA Requires Oversight Not Amendment

AHERA requires schools to inspect for friable asbestos and submit operations and maintenance plans to State Coordinators by October 12, 1988. AHERA mandates strict compliance deadlines because Congress recognized the grave and widespread danger that asbestos poses. 7/ To emphasize the need for action, deadlines and hammer provisions 8/ were written into AHERA to ensure that the Agency fulfilled its mandate and did not become side-tracked

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7/ At 132 Cong. Rec. S1481 (Feb. 20, 1986) Senator Lautenberg said that:

> Asbestos is a killer material. It is a potent carcinogen. EPA has recognized this hazard in a recently published proposed regulation which will ban most uses of asbestos in the next 10 years in order to protect the health and life of the public.

At 132 Cong. Rec. S1481 (Feb. 20, 1986) Senator Baucus said that:

> This bill [AHERA] is aimed at getting EPA more involved in helping schools remove asbestos from their buildings. We must do everything in our power to protect our children from this serious health hazard.

Moreover, Senator Baucus said during a May, 1986 hearing that "[s]cientists have not demonstrated a threshold level below which exposure to asbestos can be considered safe." Hazardous Asbestos Abatement; Hearing on S.2083 and S.2300 Before the Subcomm. on Toxic Substances and Environmental Oversight of the Senate Comm. on Environment and Public Works, 99th Cong., 2d Sess. 3 (1986).

8/ Thus, for example, AHERA provides that if EPA fails to proscribe regulations within the requisite time period, schools will be required to act in accordance with the Agency's most current guidance document. See 15 U.S.C. 2644.

by external pressures brought, for example, by the asbestos industry or the Office of Management and Budget ("OMB"). 9/

In mandating expedition, however, Congress also recognized that schools may not be able to meet deadlines for legitimate reasons. Thus Congress expressly provided EPA with authority to address evidence that legitimate resource limitations preclude compliance with AHERA deadlines. 10/ Indeed, Congress provided for precisely the concerns that, as SEIU understands it, underlie present proposals to extend deadlines.

9/ See: The Washington Post, April 16, 1985, Cass Peterson, "Asbestos-Rule Sabotage' Alleged EPA Declined Cleanup Standards in Fear of OMB, Notes Say." The article recounted:

> The Environmental Protection Agency refused to issue cleanup standards for asbestos in school buildings last year because of concern that the action might anger the Office of Management and Budget, according to internal agency notes released yesterday by Rep. James J. Florio (D-NJ).
>
> The notes, taken at a November meeting on a labor union's petition seeking the standards, indicate that Alvin L. Alm, the EPA deputy administrator, argued against the petition because he did not want to "get OMB pissed off right now."
>
> Florio charged that the document suggests that the Reagan administration "is prepared to sabotage all federal efforts" to remove asbestos from the nation's schools.
>
> "The documents give us a chilling and unusual glimpse behind the scenes of what has probably become a routine method of decision-making in Washington," said administration's "regulatory executioner."

10/ 15 U.S.C. 2647(c).

AHERA provides that in administering AHERA deadlines EPA should recognize that resource limitations must be accounted for in enforcing compliance. AHERA, at 15 U.S.C. 2647(c) states:

> (1) In determining the amount of a civil penalty to be addressed under subsection (a) of this section against a local education agency, the Administrator shall consider --
>
> (a) the significance of the violation;
>
> (b) the culpability of the violator, including any history of previous violations under this chapter;
>
> (c) the ability of the violator to pay the penalty; and
>
> (d) the ability of the violator to continue to provide educational services to the community.

Moreover, that Section in turn references 15 U.S.C. 2615 of the Toxic Substances Control Act ("TSCA"), a provision which further protects against enforcement contrary to the public interest:

> (C) The Administrator may compromise, modify, or remit, with or without conditions, any civil penalty which may be imposed under this subsection ...

In short, the legislative remedy now sought by proponents of an extension of AHERA deadlines was contemplated in 1986 and adequately addressed in AHERA itself. 11/

11/ Indeed, even if present concerns about compliance deadlines had not been expressly addressed in AHERA, the history of EPA's administration of asbestos regulation shows that concern that schools may be victimized by overly zealous and counterproductive enforcement is groundless. As immediately relevant precedent, there is the case of EPA's 1982 school inspection rule. EPA did not immediately penalize the numerous schools that, by the June

[FOOTNOTE CONTINUED ON NEXT PAGE]

SEIU, as a representative of those most likely to be endangered by faulty abatement, is most concerned that haste may further poor abatement. This concern, however, has been provided for in a carefully crafted piece of legislation. In order to protect these workers, and others, the task before Congress is not to rewrite AHERA, it is to ensure that EPA acts reasonably and consistently with AHERA's express terms to provide extensions when they are merited, but not when they are not.

Specifically, SEIU proposes Congressional oversight directed at:

(1) review of the Agency's plans for enforcement of AHERA and agreements related to compliance deadlines; and

(2) review of the activities of the EPA Regions to ensure that the Agency is doing all that it can to coordinate efforts within and among individual states so that resources can be used wisely.

In addition to oversight, SEIU proposes that Congress consider setting aside grant money to aid individual school districts in rural areas that for good reason do not have the resources to meet deadlines. If such districts are rendered capable of paying for the program, there will be incentive for individuals (or firms) to enter the rural abatement/inspection markets.

[FOOTNOTE CONTINUED FROM PRECEDING PAGE]
1983 deadline, had failed to take any action. Moreover, in the case of at least one state (South Carolina), EPA granted a one-year extension for compliance.

Finally, SEIU notes that Congressional revision of AHERA is not only presently unnecessary, but it will be counter-productive. An extension of any AHERA deadline will (1) excuse non-compliance by local education agencies that are fully capable of complying; (2) send a signal that Congress has determined that asbestos is not a serious potential hazard when the opposite is true; (3) discourage the growth of a competent inspection/abatement workforce; and (4) by virtue of these effects, either delay clean-up or abet incompetent cleanup in public and commercial buildings.

EPA's Continued Delay Of Rulemaking For Other Buildings Has Tragic Portent

On February 29, 1988, the EPA released its public and commercial buildings study some 100 days after the Congressionally mandated due date. It was the intent of Congress that "[t]he study of asbestos-related problems involving buildings other than schools will ensure that these problems receive the same level of scrutiny and study" as the schools themselves. 12/ Quite simply, this has not been done.

In 1983, SEIU petitioned EPA to make good on its 1979 commitment to comprehensive asbestos in buildings regulations. 13/

12/ Report of the House Committee on Energy and Commerce, 99th Cong. 2nd. Session, at page 32, August 7, 1986.

13/ On September 18, 1978 the Governor of New Jersey petitioned EPA, pursuant to the citizens' petition provision of TSCA, to regulate asbestos in buildings. In December 1978 the Environmental Defense Fund ("EDF") petitioned EPA to regulate asbestos in schools. When the petitions were denied, EDF filed suit. In July, 1979 EPA announced that it had "reconsidered the

[FOOTNOTE CONTINUED ON NEXT PAGE]

In 1984, the Agency told SEIU that it would engage in rulemaking to provide rules to protect against asbestos hazard in public and commercial buildings, as well as in schools. 14/ Now, EPA refuses to even proceed with rulemaking. Instead, four years after granting SEIU's rulemaking petition, EPA now states that it will take another three years to study the problem. Then, says EPA, it may decide to initiate the rulemaking it had (ostensibly) promised SEIU it would initiate seven years earlier.

SEIU is extremely disappointed by EPA's building study, and the related decision not to proceed with rulemaking. The disappointment is not simply because EPA has engaged in a transparent exercise in bureaucratic footdragging, but because the further delay will itself contribute needlessly to increased hazard and increased costs.

[FOOTNOTE CONTINUED FROM PRECEDING PAGE]
issue of rulemaking and decided to grant the petitions of the Environmental Defense Fund and the State of New Jersey." See 45 Fed. Reg. 61966 (Sept. 17, 1980), quotation at 61967.

In September, 1979 EPA issued an Advance Notice of Proposed Rulemaking for asbestos in schools. 44 Fed. Reg. 54677 (Sept. 20, 1979). In doing so, it stated that: (Id. at 54678)

> After the school program is in place, EPA will examine the need for and viability of regulation of friable asbestos containing materials in other public and commercial buildings.

Notwithstanding its 1979 commitment to New Jersey and EDF, EPA abandoned its commitment to rulemaking, and only issued a 1982 school inspection rule. In 1983, therefore, SEIU petitioned EPA to make good on its commitment.

14/ See: Response to SEIU rulemaking petition signed by Administrator William D. Ruckelshaus, February 22, 1984.

EPA's decision is unacceptable for at least four essential reasons.

First, EPA's conclusion that rulemaking is not presently in order is in violation of EPA's obligations under TSCA. TSCA Section 6 provides that EPA shall proceed with rulemaking where it finds "unreasonable risk" to be present; TSCA does not permit EPA to avoid its obligation by declaring, as EPA essentially has, that a problem is "too big."

Second, in deciding that it does not want to proceed with any rulemaking, EPA deprives the public of the benefits of even a rule requiring inspection for, and identification of, the presence of asbestos hazard. Incredibly, while declaring that the asbestos in buildings hazard is too big for EPA to take charge, EPA negligently denies workers and the public the "Right to Know" on which self-help might be based. Regardless of whether or not AHERA's abatement requirements should be immediately applied to "other buildings," there is no excuse for the absence of a "Right to Know" rule that is needed to provide minimal interim protection until abatement is mandated. 15/

15/ Indeed the requirement is so obviously appropriate that, notwithstanding its refusal to act, EPA itself is evidently in agreement that an inspection rule is in order. In a March 3, 1988 USA Today interview, Mr. Charles Elkins, Chief of EPA's Office of Toxic Substances, stated (emphasis added):

> USA TODAY: How do you respond to union leaders who say workers have a right to know if damaged asbestos is in the buildings they work in?
>
> ELKINS: I agree. Service workers work

[FOOTNOTE CONTINUED ON NEXT PAGE]

Third, EPA's failure to proceed with rulemaking has the unfortunate appearance of a declaration that the federal government does not care about the health and safety of the poorest and least powerful working members of society. EPA agrees that maintenance workers (including SEIU's members) are likely to be the most severely endangered by asbestos in other buildings, just as they were endangered by asbestos in schools. 16/ In the case of schools, custodians had the "good fortune" to be exposed to a potential hazard that might imperil children. Thus, they will benefit from protection. In the case of "other" buildings, the EPA study unfortunately implies, the absence of any group (save custodians) in special need of protection diminishes the urgency of the hazard. In sum, to the extent that there might be legitimacy to EPA's position that AHERA regulations should not be applied on an across-the-board basis to "other" buildings, there can be no excuse for EPA's failure to provide at the least, a timetable for their application to those settings where risk is most severe.

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in schools, too, and we don't want to mess up the schools in order to inspect the public and commercial buildings. It would just draw all the resources away from the school program. And we just finished deciding as a nation that we wanted to work on the schools and do that right.

16/ See footnote 1.

Regrettably, EPA's explanation for its failure to protect maintenance workers only indicates that it is as insensitive to the limited power of janitors as it is to their health. SEIU asked EPA to provide rules because the capabilities of maintenance workers to act to protect themselves are limited. Our members, for the most part, work for cleaning contractors under contract to either a building manager or an owner. If we ask questions about asbestos in a building, we run the risk that the building owner or manager will terminate the contractor and all the workers will lose their jobs. These circumstances make worker efforts to obtain health protection through traditional labor-management relations difficult, if not impossible.

Perversely, the EPA uses just such difficulty to excuse its refusal to provide the assistance needed to ensure that maintenance workers obtain admittedly necessary health protection. In the Public Buildings Report (page 30), the Agency says that regulation is too complicated because public and commercial buildings "are often characterized by multiple managers and diverse, individual occupant agreements." To this we say, "Thank you, EPA!" For the very reason that maintenance workers need EPA's help, the Agency tells them that it does not want to get involved.

Finally, and most importantly, EPA's rationale for its failure to proceed with a "public buildings" rulemaking is rooted in tragic self-contradiction; EPA's abdication of its regulatory

obligation will likely insure just the consequences that EPA says it seeks to avoid.

EPA says it cannot proceed with "other buildings" rulemaking because (1) the application of AHERA rules to "other buildings" would cost too much, (2) EPA does not have enough information about "other buildings," and (3) the country presently lacks resources to assure that abatement actions will be undertaken competently.

Meanwhile, EPA's official guidance document (presently contained in the "Purple Book") simultaneously counsels all "prudent" commercial and public building owners and/or managers to take the very steps (inspection, operations and maintenance, and, as appropriate, abatement) which EPA says should not be codified in rules. Indeed, EPA's public buildings study states at 18:

> The AHERA schools rule is also now part of the baseline and may provide voluntary guidelines for public and commercial building owners. 17/

17/ See: February 26, 1988, letter from Lee Thomas to the Honorable George Bush and the Honorable James C. Wright, Jr. At page 2 the letter states:

> If we are not careful we will stimulate more asbestos removal actions in public and commercial buildings during the next few years than the infrastructure of accredited professionals and governmental enforcement can effectively handle. For example, as public and commercial buildings are sold, investors are increasingly insisting that the asbestos in the buildings be removed, as a condition of the purchase. Unless such removals are done correctly, exposure of asbestos to the public may actually be increased. (Emphasis added)

Either EPA's counsel to voluntary action is sound or it is not. If it is sound, then it is essential that the steps EPA recommends be taken, and that they be taken correctly. By declining to proceed with any "public buildings" rulemaking, EPA continues to invite not only inaction, but incompetent action which increases hazard.

In sum, EPA's continued failure to fulfill its commitment to comprehensive asbestos in buildings is unacceptable. Both EPA's own official "guidance" and report to Congress counsel building owners/managers to voluntarily take AHERA-type actions; rulemaking is required to ensure that those who take the actions counseled by EPA will take them wisely and safely. If, as EPA contends, presently available resources preclude the "full blown" application of AHERA rules to "other buildings," then, (1) at the least, an inspection rule is required to minimize interim exposure to hazard, and (2) a timetable for the application of abatement rules to those most endangered (including maintenance workers) is required.

Thank you.

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TESTIMONY

OF THE

AMERICAN FEDERATION OF STATE, COUNTY

AND MUNICIPAL EMPLOYEES

BEFORE THE

SUBCOMMITTEE ON HAZARDOUS WASTES

AND TOXIC SUBSTANCES

AND THE

SUBCOMMITTEE ON SUPERFUND AND ENVIRONMENTAL

OVERSIGHT

OF THE

SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE

MARCH 15, 1988

84-404 226

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My name is James August, Occupational Health and Safety Specialist from the Research Department of the American Federation of State, County and Municipal Employees (AFSCME). I am a Master of Public Health and an accredited building inspector for asbestos-containing materials (ACM). AFSCME represents more than 1.4 million employees of state and local governments, school districts, public hospitals and non-profit agencies who work in a cross section of jobs ranging from blue collar to clerical, professional and paraprofessional jobs.

We have extensive experience with asbestos problems in public buildings, and have been deeply involved with the asbestos in schools issue. AFSCME is active in the Asbestos in Schools Coalition and was a member of the Federal Advisory Committee which negotiated the Asbestos-Containing Materials in Schools Rule. Based on that experience, AFSCME believes that: 1) any blanket delay in implementation of the Asbestos Hazard Emergency Response Act (AHERA) is unwarranted; and 2) EPA's Report to Congress on asbestos-containing materials in public buildings is flawed. Its recommendations fail to specify actions which will adequately protect the public's health from exposure to asbestos.

AHERA DEADLINES ARE APPROPRIATE AND ACHIEVABLE

Some school districts are apparently arguing they did not have sufficient notice to be able to comply with AHERA deadlines. For years, schools have known that they were responsible for inspection of their buildings. Asbestos has been a hot health topic for at least a decade. The 1982 Asbestos in the Schools

rule required schools to inspect for asbestos. It was largely their unsatisfactory compliance with this law and the failure of EPA to issue stricter regulations that prompted Congress to pass AHERA. At that time Congress chose to write strict time constraints into the law.

EPA, the Agency responsible for implementation of the law, did not claim that these dates were unrealistic. To date, no individual or organization has offered reliable data to substantiate the assertion that there are insufficient qualified personnel to comply with the mandated deadlines. Conversely, EPA estimated at a recent briefing that 5,000 people have taken the certification courses. The number of EPA approved courses is now over 40. If, as a conservative estimate, each training center offers the course an average of once per month to 50 students, 2,000 additional qualified inspectors and management planners are available each month. The inspection course I took had over 100 attendees.

The supply of accredited personnel should be sufficient. A substantial number of schools do not require an extensive or costly inspection and management plan. Many were built without ACM, others have removed all ACM, while still others have already conducted inspections which meet AHERA requirements and would therefore be entitled to exclusions provided in the law. To help schools find qualified personnel and control costs, local education authorities (LEAs) are allowed to have their own personnel become accredited and perform this work.

Some schools, and even whole city or state jurisdictions took the problem seriously and began to inspect for and abate asbestos hazards before Congress acted. Unfortunately, some school districts continue to pretend to be unaware of asbestos in their buildings, or knowingly ignore the hazard and thus subject their workers and the children to this deadly hazard.

It is quite conceivable that particular schools may have a legitimate reason for not being able to meet AHERA deadlines. If individual schools can prove that, despite acting in good faith to adhere to the regulations, they are unable to do so, a solution might be a case by case evaluation, not a blanket delay of a year or 18 months.

IF there are reasons that make AHERA dates difficult, they need to be identified and corrected. If some of these problems stem from lack of information about where to find skilled personnel, how to get workers trained and how to comply with the law, the solution is not a delay in implementation dates. Additional efforts by EPA to link schools with asbestos professionals, to create more training centers and to begin to allow preferential enrollment for school employees will be more to the point.

Our members are crying for action and information. After the Asbestos in Schools Rule was published in the Federal Register, we sent a summary of the regulation to our leadership nationwide and offered further information. We were inundated with requests for more information and received numerous unsolicited accounts

of asbestos horror stories. One member wrote:

"I am a custodian and in August, 1987 (emphasis added) we were instructed to replace a dropped ceiling in our school cafeteria. Half of the dropped ceiling was over an asbestos ceiling that had an exposed raw edge. A crew of 6 custodians worked on this project for two days. We were not told that we were in any danger from exposure to asbestos particles or dust that was lodged in the existing ceiling tiles, and once removed filled the air as well as our bodies with particles and dust of the asbestos product. We were not issued any face mask nor were our bodies or skin covered by protective coveralls. We were not given gloves to wear. We all had difficulty with dry throats... I expressed concern about being placed in a situation that I felt could be detrimental to my health. The men all choked and laughed saying that if there were any danger our employer would have warned us about it."

A second member wrote in: "I am a licensed stationary engineer and have taken an EPA sponsored course in asbestos abatement. I know how serious our problems are. My school board has failed to inform the staff of the presence of asbestos in our buildings. Now that it has become known, the situation is still being suppressed. We are told to keep quiet or risk punishment from the Superintendent."

EPA's REPORT TO CONGRESS

AHERA mandated EPA to study the problem of asbestos in public and commercial buildings. EPA's February 1988 Report is

in fact not a new study. Most of the data upon which EPA based its recommendations, or more accurately, non-recommendations, are taken from the survey of buildings conducted in 1983-84. The new information contained in the Report is from air samples taken in 43 Federal buildings, previous studies from about 40 schools, and data from buildings in Canada and the United Kingdom.

The choice of including air sampling in this study is a mysterious one. EPA has long held, and we fully concur, that air monitoring is not a sufficient or even relevant method for assessing the condition of, or potential hazard of ACM. According to EPA, air sampling is only justified during abatement projects to ensure that asbestos fibers are being contained, and following the work to ensure that the area has been decontaminated and is safe for entry by building occupants.

EPA estimates that 733,000 buildings contain ACM. Of this number, 501,000 buildings contain damaged ACM, 317,000 of which have significantly damaged material. This material was visually inspected and categorized nearly 5 years ago, and therefore the numbers may well underestimate the hazard as the ACM has deteriorated over this time.

The Report recommends the following steps over the next three years: increase the number of qualified personnel; concentrate on thermal insulation (i.e.; pipe wrapping); increase the efficiency of existing asbestos-related programs; and assess the effectiveness of AHERA. In view of the magnitude of the asbestos problem in public and commercial buildings, this is no

action and tantamount to an abdication of the Agency's responsibility to protect the public's health.

Existing regulations such as OSHA's asbestos standard, the EPA Worker Protection Rule, and NESHAPS do little to protect workers in most situations, and are almost worthless in protecting the health of building occupants.

For example, in one public building I inspected, nearly the entire basement ceiling contained sprayed on ACM which was badly deteriorated. A significant amount of material was dislodged from the ceiling and strewn about the floor in broken chunks and dust. An AFSCME member had been going about his daily duties of sweeping the floor with a broom, which was spreading visible concentrations of asbestos fibers into the air for all building occupants to breathe. In addition, the basement area was used for parking so the fibers were further disturbed by the motion of automobiles and the air movement which was created every time the garage door was opened.

There was significantly damaged material throughout the rest of the building, most often in air plenums which circulated fibers for the entire building population to inhale. The municipality has no intention of adequately abating this hazard. The building was inspected years ago, but management insisted there was no problem because air monitoring had revealed levels below the old asbestos standard of 2 fibers per cubic centimeter of air.

This tragic situation is allowed to exist, contaminating not

only custodial personnel and building occupants, but also the general public which may have business in the building -- and there is absolutely nothing in any existing law that can force the city to deal with this problem.

There are worse situations where state and local governments have not even bothered to inspect or taken even the most modest efforts to safeguard against asbestos exposure.

If the total of buildings with asbestos is multiplied by the number of people who work in them, it is clear this country faces a potential health hazard of staggering proportions. Not only should AHERA be implemented without delay, but that model needs to be applied on a realistic timetable to other buildings where lungs are just as vulnerable to the dangers of asbestos.

LEGISLATIVE INFORMATION

TESTIMONY

OF THE

NATIONAL EDUCATION ASSOCIATION

ON IMPLEMENTATION OF THE

ASBESTOS HAZARD EMERGENCY RESPONSE ACT

BEFORE A JOINT HEARING OF THE

HAZARDOUS WASTE AND TOXIC SUBSTANCES

AND THE

SUPERFUND AND ENVIRONMENTAL OVERSIGHT

SUBCOMMITTEES OF THE

ENVIRONMENT AND PUBLIC WORKS COMMITTEE

U.S. SENATE

PRESENTED BY

ROSILYN SCHLEIFE

LAKE HOLCOMBE PUBLIC SCHOOL

LAKE HOLCOMBE, WISCONSIN

MARCH 15, 1988

MARY HATWOOD FUTRELL, President • KEITH GEIGER, Vice President • ROXANNE E. BRADSHAW, Secretary-Treasurer
DON CAMERON, Executive Director
(202) 822-7300

Mr. Chairman and Members of the Subcommittee:

I am Rosilyn Schleife, a teacher in the Lake Holcombe Public School system in Lake Holcombe, Wisconsin, and a member of the executive committee of the National Education Association. The NEA represents nearly 1.9 million education employees throughout the nation in elementary, secondary, vocational, and postsecondary schools. I appreciate the opportunity to talk with you today about an issue of great importance to the lives of millions of American public school students and public school employees: the timeliness by which our nation will address the grave threat of asbestos hazards in America's schools.

NEA has a longstanding concern about the threat of asbestos in the schools. NEA and its state and local affiliates have been active in the effort to find remedies to eradicate this threat to human health through a cooperative effort of local, state, and federal governments and affected communities. I do not feel it necessary to review here the history of asbestos hazards or to reemphasize the clear danger asbestos presents in schools and other buildings where Americans live and work. The commitment of Congress to eradicate asbestos hazards in the schools was demonstrated by the enactment of the Asbestos School Hazard Abatement Act (ASHAA) in 1984 and subsequent appropriations under that statute. It was further demonstrated by the enactment of the Asbestos Hazard Emergency Response Act (AHERA) in 1986, which was passed without a single dissenting vote.

However, it is important to recognize that these two laws did not by themselves eliminate the threat; rather, they

established a process by which appropriate agencies can make a comprehensive assessment of where asbestos hazards exist in the schools and then carry out the appropriate response action which protects human health and the environment. NEA challenges the idea that the existence of asbestos-containing materials in schools does not pose a direct threat to the nation's schoolchildren. A direct threat is posed whenever these materials are damaged or deteriorate causing hazardous fibers to be released into the air. Fiber releases are likely to occur inadvertently on a daily basis as a result of such actions as maintenance personnel changing light fixtures, children throwing basketballs at asbestos-covered gym ceilings, and even building vibrations and air movements against asbestos-covered surfaces. AHERA was intended to ensure preventative measures were implemented to prevent fiber releases and their resulting health threats. Until a full and thorough inspection of every school is completed, we will be unable to say — in a conclusive way — where asbestos health hazards exist. The EPA's most recent estimate indicates that as many as 44,600 schools nationwide contain some 213 million square feet of friable asbestos. The time has come to stop dealing with percentages and projections and assumptions and to start taking affirmative steps to address the problem in every school building where it exists. That is precisely what AHERA was enacted to do.

NEA was an active supporter of AHERA and was involved in the negotiated rulemaking through which EPA established regulations to carry out the provisions of that Act. We believe that AHERA

and its regulations create a process by which inspections and response actions can be carried out in a safe, orderly, and timely manner. When those regulations were challenged in the District of Columbia Court of Appeals by representatives of corporations that formerly produced asbestos-containing building materials, we joined school boards, citizen groups, state law enforcement officials, and other labor organizations in a brief supporting the regulations.

Despite broad support for these regulations among those responsible for its implementation, EPA has not done all it could to provide local school districts with information and assistance. We are deeply disturbed by the fact that EPA, to date, (1) has not developed a model management plan that could be used by schools, (2) has not provided adequate resources in its regional offices to assist schools, (3) has not developed a centralized list of accredited inspectors, and (4) has not worked aggressively enough to ensure that more training courses and training slots to certify inspectors and management planners are available and that more labs are accredited.

Although in some cases it has been slow to respond to the needs of local schools, EPA is taking some steps to deal with these issues. For example, EPA's Region V office, working in conjunction with the Midwest Asbestos Information Center, is developing a model management plan which will be available for distribution to all schools. A guidance document explaining the regulations has just been mailed to all 45,000 school districts, and a national teleconference is planned for April.

Existing obstacles to compliance with AHERA must be addressed. But simply extending the inspection deadline is not an appropriate solution.

There is a long and appalling record of avoidance and delays related to the problem of asbestos hazards. Nearly 40 years passed between the time scientists linked exposure to asbestos with the development of life-threatening diseases and the enactment of a federal prohibition against using asbestos in new construction. Several more years elapsed before EPA established a voluntary program for the detection and abatement of asbestos health hazards in the schools. Six years ago, the EPA was forced to admit that this voluntary program had failed. In 1982, EPA issued a regulation requiring all school districts to inspect for friable asbestos in their schools and to notify school employees and students' parents where it existed. By January 1984, six months after the deadline, only 11 percent of America's school districts were in complete compliance with the EPA rule. Even those districts that did inspect and notify failed to take the next essential step — abating the asbestos hazards. That is why the tough, stringent, comprehensive requirements in AHERA were necessary.

AHERA became law in October 1986. The regulations were completed on time a year later. The deadline for inspection of school buildings is October 1988. That's two years after passage of the Act, one year after publication of the regulations, and five and one-half years after the EPA's original June 1983 deadline for all school districts to inspect their buildings and

analyze any friable materials found. After nearly six years of inaction, the solution is not further delay.

We are concerned that even the introduction of legislation to extend the deadline sends the wrong signal to state and local agencies. The American Association of School Administrators recently reported that some school districts expect the deadline to be extended so they are waiting to begin plans. An AASA survey cited one respondent as saying that "if they (schools) unify in refusing to comply with AHERA they will not be penalized." This kind of attitude is one important reason why AHERA had to be enacted, why Congress established short timelines for completion of inspections and management plans, and why the Congress must be unequivocal in its message to responsible officials. Friable asbestos is a hazard, it is present in America's schools, and it must be removed, contained, or maintained to ensure that the danger does not persist.

In my home state of Wisconsin most schools are moving forward responsibly and expeditiously to comply with the existing timelines of AHERA, and I do not believe that Wisconsin is unique in this respect. There have been some problems getting local staff trained, given that most school districts would prefer to have someone on-site who can advise maintenance people and others about the proper handling of asbestos containing materials. And some people responsible for taking appropriate response actions have expressed frustration with EPA's failure to provide definitive answers to specific questions about asbestos, for example, is floor tile that contains asbestos a maintenance

problem or an abatement problem? But the need to move with dispatch to eradicate asbestos hazards is illustrated by one horror story in a Wisconsin school. A school superintendent is being sued for directing a teacher to use his industrial arts students to knock down a ceiling without telling them that the ceiling contained asbestos.

The elimination of asbestos hazards is long overdue. The further delay provided under S. 2024, S. 2025, and H.R. 3893 would only subject schoolchildren and school employees to at least another one and one-half years of hazardous exposure. AHERA gave schools two years for inspection and plan development. If school boards had taken immediate steps to comply with the law, including appropriate budget planning, the overwhelming majority would be in a position to complete the inspection and plan development requirements on time. Even if some school districts still face difficulties in moving forward, we believe that problems such as the shortage of training centers and accredited contractors should be addressed directly; an extension of time, by itself, would not provide the necessary additional resources, it would not provide any additional qualified people to conduct inspections, it would not increase the number of training centers to certify personnel to conduct inspections, and it would not increase the number of accredited labs for sample analysis. Time alone will not compel school districts to complete the needed inspections and management plans any more thoroughly or responsibly.

We question the seriousness of the alleged shortage of accredited inspectors. The only requirement for inspectors is that they attend a three-day EPA-approved training course and pass a written test; management planners must also complete an additional two-day course. Schools can have their own personnel accredited as inspectors and management plan developers, and indeed they are. In some classes as many as 50 percent of the slots are being filled by school personnel.

As of February 1, new data from EPA shows that there are 5,183 accredited inspectors, 4,809 accredited management plan developers, 12,884 abatement contractors, and 26,525 accredited asbestos abatement workers. The number of approved training courses has almost doubled since January, from 23 inspector courses (21 of which also provide management plan training) to 42 inspection courses (40 of which provide management plan training). Five additional courses are awaiting approval.

Since each training course offers at least one class per month and 50 people, on average, can be trained per class, more than 2,000 additional accredited inspectors and management plan developers become available each month, for a projected 20,000 accredited personnel by September 1.

Much has been made of an estimate that it will take some 8,000 work days to inspect all 25,000 school buildings in Texas. On its face, this seems a significant obstacle. In reality, if 100 people were assigned to conduct the inspections — after completing the three-day EPA-approved course — it would take only 16 weeks, well within the statutory time frame. What Texas needs

is not just time but resources. Moreover, this estimate assumes that all buildings require an inspection, sampling, and assessment, ignoring the fact that some buildings will be eligible for the AHERA-provided exclusion and many will only have non-friable asbestos which does not require sampling or lab analysis.

One reason given for the extension of the deadline is the districts' desire to avoid being penalized for non-compliance. Some have charged that the penalties for non-compliance with AHERA regulations are punative. They are not. The fines assessed for missing the October 1988 deadline — unless they are criminal penalities assessed for knowing or willful violations — would be returned to the school for the inspections and management plan development. In addition, in assessing the fines, EPA must consider the ability of the school to pay the penalty and its ability to continue to provide educational services.

Moreover, many schools — in whole or in part — were properly inspected for asbestos in 1982 as required by previous EPA regulations, and these schools may be granted exclusions from the new inspection requirement under AHERA. EPA has ruled that an initial inspection of portions of the school or the entire school is unnecessary if (1) an accredited inspector has determined that a previous inspection identified asbestos-containing building material (ACBM) or indicated no ACBM was present; (2) the school is built after October 12, 1988, and an architect or project engineer or accredited inspector signs a statement indicating

that no ACBM was specified for use in construction documents; or (3) a school's inspection and abatement records indicate that all ACBM was removed.

The vast majority of school districts are moving toward full and timely implementation of AHERA. In fact, of 24 school districts surveyed by AASA, all but two were undertaking some action as of February 15, ranging from registering their own staff for training courses, soliciting bids from and engaging inspection contractors, to actually beginning inspections.

Changing the standard at this stage of the game, extending the deadline a year, 18 months, or more, would send a signal to the school districts — even those that are acting responsibly and are moving move ahead with inspections and management plans — that it is okay to procrastinate. In addition, there is no guarantee that one year from now Congress won't be asked to extend the deadline further.

One action that will provide some relief to hard-pressed school districts is the April 1 release of $15 million in FY88 ASHAA funds for grants to states under the Asbestos Inspection and Management Plan Assistance Program (AIMPAP). These awards, ranging from $100,000 to $1 million, will be used by states to help local education agencies conduct inspections and development management plans. This is on top of $5 million granted in October 1987 to 12 states: Kansas, Oregon, Alaska, Arkansas, Kentucky, Montana, North Dakota, Wisconsin, Nebraska, Virginia, Washington, and Minnesota. While this combined $20 million falls far short of the need, it does provide some targeted relief.

NEA recognizes that there is a need for still greater guidance and assistance from EPA. We recognize that there should be even more certified contractors, training centers — particularly in rural areas — and information about the availability of certified personnel. We recognize that many school districts face severe budgetary problems in dealing with asbestos hazards. Rather than proposing an extension of the AHERA timelines, NEA recommends that Congress enact a $25 million FY88 supplemental appropriation for EPA, $15 million to be used for additional grants under AIMPAP. Since many more applications have been received by EPA than will be funded, additional dollars can be quickly distributed to provide grants to additional states and/or to increase the size of existing grants to states. The other $10 million would be used primarily to (1) add staff in the regional offices to assist states and schools with inspections and management plans, (2) expand the number of training courses — particularly in rural areas — to certify inspectors and management planners, and (3) provide financial incentives to increase the number of accredited analysis labs. In addition, EPA should be directed to disseminate information on the more than 5,000 people nationwide who have received accreditation from EPA-funded training centers or satellite schools and to distribute the standardized management plan and other technical assistance that would help state and local agencies meet the existing deadlines.

NEA believes this proposal will resolve any remaining problems faced by the schools. However, if the Congress believes

that more time is needed, there are better alternatives than a blanket extension. We urge you to consider such alternatives as granting EPA authority to provide temporary extensions — should they be warranted — on a state-by-state or even on a school district-by-school district basis. Another possibility is to grant EPA authority to temporarily waive penalties for noncompliance if a school district shows it made a good faith effort to comply. Of course, any extension must make clear that any asbestos work performed in the school in the interim must be performed by certified personnel. This will ensure that schools don't try to rip out asbestos using untrained personnel to avoid having to meet the inspection and management plan requirements.

It is time to acknowledge that the problem of asbestos health hazards in our schools does exist, and that we must work together to address the problem. By working together, we mean that local, state, and federal officials must pool their resources and their expertise to eradicate this threat to the lives of the 15 million schoolchildren and 1.4 million school employees who continue to be exposed to asbestos health hazards in their schools.

The EPA estimates that it will cost more than $3 billion to fully address this problem. To date, the federal government has provided $190 million in grants and loans to school districts and states through ASHAA, about 6 percent of the total cost. And yet in spite of the known danger, President Reagan recommended only $3.4 million for ASHAA for FY89. This proposal is unconscionable. Congress has never appropriated the full amount

authorized under ASHAA, and raising the authorization will not make it better. We urge you to support an appropriation of $125 million for ASHAA — the full authorized amount. In light of the needs of school districts and the lives of affected citizens, the only appropriate response is to provide the resources to carry out Congress' intent in both ASHAA and AHERA.

Thank you.

NSBA

FEDERAL RELATIONS

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TESTIMONY

on behalf of

THE NATIONAL SCHOOL BOARDS ASSOCIATION

on

AHERA OVERSIGHT

before the

SUBCOMMITTEE ON HAZARDOUS WASTES AND TOXIC SUBSTANCES
and the
SUBCOMMITTEE ON SUPERFUND & ENVIRONMENTAL OVERSIGHT
of the
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

United States Senate
406 Senate Dirksen Office Building

March 15, 1988

Presented by

Robert L. Anderson
Montana School Boards Association

Also present for NSBA:

Thomas A. Shannon
Executive Director

Michael A. Resnick
Associate Executive Director

Katharine L. Herber
Legislative Counsel

I. INTRODUCTION

I am Robert L. Anderson, Executive Director of the Montana School Boards Association. I am pleased to have this opportunity to testify before the Senate Subcommittee on Hazardous Wastes and Toxic Substances. MSBA is the only major education organization representing the over 95,000 locally elected and appointed school board members across the nation.

Currently marking its forty-ninth year of service, MSBA is a federation of state school board associations, with direct local school board affiliates, constituted to strengthen local lay control of education and to work for the improvement of education. Nationwide, local school board members are politically accountable to their constitutents for the prudent operation and fiscal management of the local school districts they serve. As unsalaried governmental officials, school board members are uniquely positioned to judge the federal legislative programs purely from the standpoint of public education, without consideration to their personal professional interest.

II. OVERVIEW

The **Asbestos Hazard Emergency Response Act of 1986 (AHERA)** -- PL 99-519 -- was enacted by the Congress and signed into law by the President on October 22, 1986. An amendment to the **Toxic Substances Control Act**, the purpose of the new law was threefold.

First, it required the Environmental Protection Agency (EPA) to establish regulations to require inspection for asbestos-containing material and appropriate

response actions with respect to asbestos-containing material in the nation's primary and secondary schools in a safe and complete manner. Secondly, the new law mandates periodic, post-response action re-inspection of school buildings where appropriate. Finally, the Act required the EPA Administrator to conduct a study to ascertain the extent asbestos contained in public and commercial buildings poses a danger to human health.

In order to assure that the purpose of the new law was realized, the Act left very little to the regulatory imagination of the EPA. In that regard, the Act itself established specific legal requirements for both the appropriate process and procedure to be undertaken by local public school districts in response to the presence of asbestos-containing materials in their buildings. In large measure, these legal requirements assume the existence of a viable private sector which is ready, willing and legally capable of performing certain services. Moreover, the Act mandates that at least two legal requirements, school building inspection and management plan submission to the governor of the state in which a school is located, be met no later than October 12, 1988 (sec. 205 [a]).

For the reasons set forth herein below, the National School Boards Association believes that despite all due diligence, that many local public school districts across the country will be incapable of complying with the October 12, 1988 deadline contained in the **Asbestos Hazard Emergency Response Act** (sec. 205[a]).

III. INSPECTORS AND MANAGEMENT PLANNERS

A. THE ACT REQUIRES THAT INSPECTIONS BE CONDUCTED AND MANAGEMENT PLANS FORMULATED BY INSPECTORS AND MANAGEMENT PLANNERS WHO HAVE SUCCESSFULLY COMPLETED AN EPA APPROVED TRAINING COURSE (SEC. 206 [C][2]).

1. **THERE ARE CURRENTLY TWENTY-THREE (23) EPA APPROVED TRAINING CENTERS WHICH OFFER COURSES TO INSPECTORS AND/OR MANAGEMENT PLANNERS.**

The Act requires that building inspections be completed and management plans prepared by a person who has successfully completed an EPA approved course of training (sec. 206 [c][2][A]).

As of February 10, 1988, there were 23 training centers which offered an EPA approved course of training to prospective inspectors and management planners nationwide (Federal Register, February 10, 1988, Attachment A). EPA has not released to the public the names and addresses of additional training centers which may have received approval since that date.

Of these training centers, two offer courses for inspectors only (Hygientics located at Boston, Massachusetts, and the University of Florida at Gainesville, Florida). The remaining training centers offer a combined training course for both inspectors and management planners. The average cost of the combined five day training course for inspectors and management planners ranges from $440 to $760, excluding costs of transportation, lodging and meals.[1]

[1] Local school districts which enroll district personnel in the combined training course for both inspectors and management planners report total cost to the district to range from $2,000 to $5,000 per attendee.

2. **ALL EPA APPROVED TRAINING COURSES MAY NOT MEET THE REQUIREMENTS OF A PARTICULAR STATE'S EPA APPROVED ACCREDITATION PROGRAM** (sec. 206[b][2]).

EPA approved state accreditation programs have the authority to have more stringent requirements than the EPA Model Plan (sec. 206 [b][2]). As a result, some EPA approved training courses may not meet the requirements of a particular state's accreditation program. There is no statutory requirement that a state, which receives EPA approval of an accreditation program which is more stringent than the EPA model plan, accept inspections conducted and management plans formulated by persons who have successfully completed an EPA approved course of training, but which do not meet the specific requirements of the state program.

As of February 10, 1988 (Federal Register, at pp. 3984-3986) EPA had not approved a state accreditation program which included courses for inspectors and/or management planners. Because this is so, it is not currently known which training center courses, if any, will meet the future requirements of a particular state's accreditation program.

The final EPA Model Plan for the Inspector/Management Planner Course will not be available until after April 1, 1988. Therefore, at the present time, no local public school district which has entered into a contract with an inspector/management planner, and/or has sent school

district personnel to an EPA approved course, can be assured that these individuals will meet the requirement of their state's accreditation program in the future.*

3. **NOTWITHSTANDING THE FACT THAT EPA HAS NOT APPROVED A PARTICULAR STATE'S ACCREDITATION PLAN, ALL EPA APPROVED TRAINING COURSES MAY NOT MEET THE REQUIREMENTS OF STATE STATUTE GOVERNING ASBESTOS INSPECTORS AND MANAGEMENT PLANNERS.**

Prior to passage of **AHERA**, many states enacted legislation to address the problems occasioned by the presence of asbestos-containing material in public buildings, including public school buildings. However, in some instances, the requirements of state law are inconsistent with the new federal law. For instance, EPA has not approved a training center in New York state, despite the fact that at least one training center in that state meets the requirements of state law. For many local school district personnel, the Mid-Atlantic Asebstos Training Center at Piscataway, New Jersey is the most convenient EPA approved training center. Nevertheless, the inspector and management planner courses offered at the New Jersey training center do not comport with the requirements of New York law.

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* **NSBA RECOMMENDATION:** As a condition precedent to EPA approval of a state program to accreditate inspectors and management planners, the state program shall provide that: (a) all EPA accredited inspectors and contractors who entered into a bone fide contract to perform inspections and develop management plans prior to the date EPA approved the program; and (b) all EPA accredited school district personnel, who commenced work to inspect and/or develop management plans prior to the date EPA approved the program, shall be deemed to meet the requirements of the state accreditation program.

For New York school districts, simultaneous compliance with both state and federal law requires that personnel attend two different training courses.

As noted previously, all inspectors and management planners approved by state law may not meet EPA accreditation requirements. Thus, in Ohio, state law requires that all public buildings must be inspected for asbestos. That state has certified 404 hazard evaluation specialists to perform both inspections and to develop management plans. Nevertheless, only 87 of those individuals have received EPA accreditation. Moreover, because of the broad Ohio inspection mandate, there is no guarantee that even one of the 87 EPA accredited inspector/management planners would be available to local school districts.

4. **TRAINING CENTERS REPORT THAT THEY ARE UNABLE TO ACCOMMODATE ALL PROSPECTIVE COURSE ATTENDEES.**

NSBA conducted a telephone survey of training centers which had received EPA approval as of October 17, 1988, to offer courses to inspectors and/or management planners. Fourteen of the nineteen training centers responded to the survey (Attachment B). Two of the respondents offered courses to inspectors only.

Ten training centers reported that their classes were currently filled. Six of these training centers maintain a waiting list for

their course offerings. The number of wait-listed prospective course attendees ranged from ten (University of Utah) to 320 (University of Illinois at Chicago).

Survey respondent training centers which had course openings are located at Lawrence, KS; Boston, MA (inspector only); Longmeadow, MA; Woburn, MA; and Marietta, GA.

a. **Training Center Location Favors a Minority of School Districts from a Few States.**

A review of the location of EPA approved training centers shows that access to course offerings is much greater for a minority of local school districts in a few states. For instance, all EPA Region I training centers are located in Massachusetts. In Region IV, three of five EPA approved training centers are located in Georgia and both Region VII training centers are situated outside of Kansas City, Kansas. Alternatively, there is only one training center per Region in Regions II, VII, and X.

b. **Even If EPA Approves Additional Training Centers, Some EPA Approved Training Centers, Which Currently Offer Courses, Will Discontinue Course Offerings.**

EPA has indicated that it will continue to approve courses for inspectors and management planners. Nevertheless, at least one

training center, the University of Florida, reports that despite the need for additional courses, limited financial resources have forced them to refrain from scheduling new classes at this time.

c. **New Training Centers Which Await EPA Approval have not Scheduled Classes Until After May, 1988.**

The cost to both establish a training center and attend training courses makes it imprudent for an institution to offer or, for an individual to take, courses which have not received EPA approval. Therefore, while it is true that more EPA approved training centers may be available in the future, many of these centers will not begin operation until after May, 1988 — less than five months prior to the October 12, 1988 deadline.

For instance, the South Dakota State University, through its Extension Engineering Department, intends to offer training courses when their curriculum has been approved by EPA. Nevertheless, and anticipating full EPA approval, the <u>first</u> training program is not scheduled until May 9.

5. **ON MARCH 10, 1988, EPA REPORTED THAT EPA APPROVED TRAINING CENTERS HAVE ACCREDITED ONLY 5,183 INSPECTORS**

On March 10, 1988, EPA reported that EPA approved training centers had accreditated 5,183 persons qualified to perform inspections of school buildings.

There are over 17,000 local public school districts in the United States. However, the nationwide number of local public school districts only hints at the actual number of local public school district buildings which must be inspected and for which a management plan must be developed. EPA has estimated that there are over 107,500 public and private schools with an unreported number of buildings which must receive an initial inspection.[2]

a. The Actual Number of EPA Accredited Inspectors Available to School Districts is Unknown.

EPA has acknowledged that not all accredited inspectors will be available to inspect school buildings owned or controlled by local public school districts. Rather, many of these inspectors have received training at the behest of their employer, or for the express purpose of providing inspection services to a particular corporation and other governmental and commercial facilities both in the U.S. and abroad.[3]

b. The Current Number of EPA Certified Inspectors are Inadequate to Meet the Demand of 17,000 Local Public School Districts Before the October 12, 1988, AHERA Deadlines.

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[2] In Texas alone, 1,065 school districts own more than 25,000 buildings which contain over 400 million square feet of space.

[3] Tufts University reported many course attendees from abroad.

The Act requires that each elementary and secondary school building operated or controlled by a local public school district (sec. 202 [13][A],[B],[C] and [D]) undergo an initial inspection for asbestos-containing material unless specifically excluded by the Act (sec. 203 [b]).

A school building, or portion of a school building may be excluded from the initial inspection mandate only upon a showing that "...(1) an inspection of such school building (or portion) was completed before the effective date of the regulations, and (2) the inspection meets the procedures and other requirements of the regulations under this title or of the 'Guidance for Controlling Asbestos-Containing Materials in Buildings' (unless the Administrator determines that an inspection in accordance with the guidance document is inadequate)..." (sec. 203 [b]).

A cursory reading of section 203 (b) might lead one to assume that school districts which complied with pre-AHERA law would be excluded from the AHERA initial inspection process, thereby reducing the number of accredited inspectors needed to conduct the inspection of school buildings. However, this is not necessarily the case.

First, prior to passage of the Act, there was no requirement that school districts inspect for the presence of all asbestos-containing material in their buildings. Rather, schools were

required to inspect for friable asbestos only. While it is true that some inspections undertaken by local school districts may have identified the presence of all asbestos-containing materials in the buildings of a particular school district, it would be impractical to assume that the majority of local school districts went beyond the maximum legal requirement of inspection for friable asbestos.

Secondly, in general, an exclusion from the intitial inspection requirement is predicated on an EPA accredited inspector signing a statement covering each sampling area or homogeneous area to be excluded. The statement must provide that based on sampling records in any sampling or homogeneous area: (1) friable asbestos-containing building material (ACBM) was identified during an inspection conducted before the effective date of the regulations; or (2) nonfriable ACBM was identified during an inspection conducted before the effective date of the regulations; or (3) no ACBM is present in the homogeneous or sampling area and the records show that the area was sampled; or (4) suspected ACBM identified in a homogeneous or sampling area is assumed to be ACM; or (5) in the case of an area where asbestos removal operations were conducted prior to the effective date of the regulations and based on contractor and clearance records, that no ACBM is present.

The requirement that an EPA accredited inspector sign the type and quality of statement envisioned by the Act and enunciated in the

regulations is frought with complications. First, because the majority of pre-AHERA inspections identified only friable asbestos, only a re-inspection would pinpoint the existence of all ACBM in a specific sampling or homogeneous area. Secondly, in order to determine if suspected ACBM is, in fact asbestos-containing material, an inspection should be undertaken.

Therefore, NSBA believes that in most instances, **all 17,000 local public school districts will require the services of an EPA accredited inspector prior to October 12, 1988.** Moreover, NSBA believes that 5,183 EPA accredited inspectors are **incapable of meeting the local public school district demand for EPA accredited inspectors prior to the October 12, 1988 deadline.**

6. **ON MARCH 10, 1988, EPA REPORTED THAT EPA APPROVED TRAINING CENTERS HAVE ACCREDITED ONLY 4,809 MANAGEMENT PLANNERS.**

The Act requires that each of the over 17,000 local public school districts develop an asbestos management plan for all school buildings under its administrative control and direction in which asbestos-containing material is present (sec. 203 [i][1]). The management plan must be developed by an EPA accredited management planner (sec. 206 [a][2]).

On March 10, 1988, the EPA reported that 4,809 management planners had received accreditation from EPA approved training centers. NSBA

believes that the number of currently accredited management planners will be incapable of completing the management plans which local public school districts must submit to their governor on or before October 12, 1988. This is so for several reasons.

First, EPA has reported that EPA approved training centers have accredited 5,183 inspectors and 4,809 management planners. EPA did not discuss the calculation they used to arrive at this figure. However, accreditated management planners must, as a condition precedent, successfully complete the training course for inspectors. Moreover, the majority of EPA approved training centers offer the inspector/management planner training as a combined course. Therefore, NSBA assumes that a total of 5,183 persons have completed EPA approved training courses. Further, NSBA assumes that all 5,183 persons are EPA accredited to perform inspections and that 4,809 of that number are also accredited to develop management plans.

If the NSBA assumption is correct, accredited management planners must necessarily come from the woefully inadequate pool of accredited inspectors.

Secondly, as discussed herein, those school districts which qualify for an exclusion may not require the services of an accredited inspector for more than an analysis and review of inspection and sampling work performed prior to the effective date of the regulations. However, each local public school district with asbestos-containing material present in their building(s) must,

without exception, develop a management plan. For that reason, the ratio of currently accredited management planners to inspectors is inversely proportionate to the actual services, in man hours, required by local school districts under the Act.

IV. LABORATORIES

A. LABORATORIES PERFORMING ANALYSIS OF BULK SAMPLES OF ASBESTOS-CONTAINING MATERIALS MUST BE ACCREDITED BY THE NATIONAL BUREAU OF STANDARDS (sec.206[d]).

The Act requires that all laboratories which perform analysis of the bulk samples of abestos-containing material for the purpose of inspection and development of the management plan must be accredited by the National Bureau of Standards (NBS).

1. ON MARCH 10, 1988, EPA REPORTED THAT APPROXIMATELY 175 LABORATORIES HAVE BEEN ACCREDITED BY THE NATIONAL BUREAU OF STANDARDS TO PERFORM THE BULK SAMPLES OF ASBESTOS-CONTAINING MATERIAL UNDER THE ACT.

EPA has reported that the NBS has accredited approximately 175 laboratories nationwide. NSBA has been apprised by state school board associations that the number of accredited laboratories are unevenly distributed geographically. For instance, Region VII (16 accredited laboratories), and the State of Ohio (34 accredited facilities) account for over one quarter of the total NBS accredited laboratories nationwide.

2. **ACCREDITED LABORATORY FEES RANGE FROM $12 TO $50 PER SAMPLE FOR THE SAME TYPE OF ANALYSIS.**

Local school districts have reported that fees charged by accredited laboratories range from $12 to $50 per sample for the same type of analysis. Because local school districts have a legal obligation to expend taxpayer dollars in a prudent manner, they will choose the laboratory with the lowest price to process their samples. Such fiscally prudent action by local school districts will create an uneven distribution of sample load that will exacerbate the capacity strain of accredited laboratories.

3. **LABORATORIES MAY DISREGARD THE NEED FOR ACCURATE SAMPLE READINGS IN ORDER TO CAPTURE A LARGER MARKET SHARE OF THE AHERA ANALYSIS MARKET.**

The Texas Department of Health reports that a laboratory employee can perform no more than twelve samples per day without incurring possible eye strain and faulty sample readings. Nevertheless, the Texas School Services Foundation loss control division found that "...some laboratories are promising up to 80 samples per person per day in order to capture a larger market share of laboratory analysis business." The results of sample readings conducted under these circumstances can only result in faulty or inaccurate management plans, and thereby, inappropriate response actions.

4. **CURRENTLY ACCREDITED LABORATORIES CANNOT GUARANTEE THAT SAMPLE ANALYSIS WILL BE PERFORMED IN A TIMELY FASHION.**

Most school districts, which have only begun the process of sample analysis, have reported that accredited laboratories will not guarantee that all sample analysis will be completed before August, 1988. For instance, the Kansas School Boards Association noted that, assuming a minimum of five samples taken in approximately 2,000 school buildings, compliance with the Act would require the analysis of no less than 10,000 samples. Nevertheless, inspectors have told Kansas school districts that they refuse to guarantee that laboratories will return sample analysis in a timely fashion.[4]

Unfortunately, school districts in other parts of the country (notably northern California), have reported that in an attempt to persuade local school districts to enter into contracts for inspection and management plan development, some firms have alleged that they have contracted for all available accredited laboratory time in California.

Moreover, the Texas School Services Foundation has revealed that Texas currently has a sample processing capacity of approximately 10,000 samples per month. Assuming that sample submissions must end by mid-July, 1988, the Texas School Services Foundation believes that their school districts may face a backlog of 40,000 to 60,000 unprocessed samples by August 1, 1988.

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[4] Using the projection of the Texas Department of Health that one laboratory analyst can perform no more than 12 samples per day without jeapordizing the sample reading, it would require the full time services of one analyst 833 days to complete the Kansas samples.

NSBA does not believe that these reports are unusual. Rather, NSBA believes that they represent a growing realization on the part of both inspectors and laboratories that sample analysis will not be completed in time for many school districts to develop a management plan prior to the October 12, 1988 deadline.

V. INSURANCE AND STATE LICENSES TO DO BUSINESS

A. IN SOME STATES IT IS UNLAWFUL FOR A GOVERNMENTAL ENTITY TO CONTRACT WITH AN UNINSURED OR UNDER-INSURED PRIVATE SECTOR BUSINESS.

In some states, it is unlawful for governmental entities to contract with a private sector business which isunable to provide a certificate of insurance. Nevertheless, many local school districts have reported that many inspectors and management planners have no insurance coverage or have coverage which does not meet minimum legal requirements in their jurisdiction.

Neither the Act, nor the regulations require that EPA accredited personnel show that they are financially responsibile for completing their contractual obligations in compliance with the new law.

B. THE INSURANCE COVERAGE OF MANY LOCAL SCHOOL DISTRICTS SPECIFICALLY EXCLUDES COVERAGE FOR ACTIONS UNDERTAKEN IN CONJUNCTION WITH ACBM.

The majority of local public school districts carry errors and omissions policies for their employees. The purpose of the insurance is employee

liability indemnification. However, errors and omission coverage routinely excludes coverage for employee actions relating to asbestos. The result of the exclusion is to leave the employee personally liable for his actions and his assets available to attachment and garnishment.

Because this is so, school districts have become leery of taking on an assignment which involves any aspect of AHERA.

C. **MANY STATES REQUIRE THAT PRIVATE SECTOR SERVICE INDUSTRIES BE LICENSED TO CONDUCT BUSINESS WITHIN THE STATE. IN THOSE STATES, LOCAL SCHOOL DISTRICTS MAY LAWFULLY ENTER INTO A CONTRACT ONLY WITH PERSONS WHO HOLD A CURRENT, VALID LICENSE TO DO BUSINESS IN THE STATE IN WHICH THE DISTRICT IS LOCATED.**

In many states, the lawful performance of services is predicated on the existence of a current, valid, state-issued license to do business. In those jurisidictions, it is unlawful for a local public school district to enter into a service contract with a person or entity which does not hold such a license.

Neither the Act nor the regulations require EPA accredited inspectors and/or management planners to be licensed do business in the state in which they perform services or that these individuals be are familiar with the requirements of both state and local law governing service contractors.

School districts report that it is not unusual for both inspectors and management planners to assume that EPA accreditation confer upon them both

a professional status and a right to work irregardless of state or local law to the contrary.

VI. LOCAL PUBLIC SCHOOL DISTRICT BUDGET CYCLES AND FINANCING

A. THE MAJORITY OF LOCAL PUBLIC SCHOOL DISTRICTS OPERATE ON A FISCAL YEAR BUDGET CYCLE.

The majority of local public school districts operate on a fiscal (July 1), rather than calendar year, budget cycle. In general, development of the budget takes approximately one year. Thus, administrators commence formulating a document in April which is reviewed and finally adopted by the school board the following March.

The Asbestos Hazard Emergency Response Act was enacted into law in October, 1986. At the time the Act became law, local school districts had already spent seven months formulating their budget document for FY 1987-88. Moreover, when the FY 1987-88 budget for most local public school districts was finalized in March, 1987, EPA had only begun the process of negotiated rulemaking. Therefore, it was not possible for school districts to fully budget for AHERA compliance costs prior to the FY 1988-89 budget cycle.

B. IN MANY CASES, SCHOOL DISTRICTS MUST ISSUE GENERAL OBLIGATION BONDS TO PAY THE COST OF AHERA COMPLIANCE.

Many local public school districts issue general obligation bonds to cover the costs of those projects which are not directly related to the

educational operation and management of the school system. In general, the process of issuing a general obligation bond takes approximately six months to one year. Moreover, because general obligation bonds are predicated on a promise by the taxpayers to pay the cost of the debt through tax dollars, the issuance must be placed on a ballot. In a number of states, general obligation bonds may be placed on the ballot only once a year, in November.

It might be argued that in order to prepare a bond package that local school districts did not require EPA regulations. Rather, one might be inclined to point to the specificity of the Act and opine that surely a cost estimate of both inspection and development of a management plan could have been undertaken for the purpose of bond issuance. However, this is not necessarily true.

First, until EPA regulations were final, no one could predict the nature and extent of both the inspection and/or the management plan. Furthermore, no person could guarantee that they would be EPA accredited to either conduct a school building inspection or to develop a school building management plan.

Secondly, because the nature and extent of the required services was unpredictable, so to was the cost of those services. In that regard, issuance of a bond must be based on both accurate cost accounting and a sound political judgment that the school district will only have to take the measure to the voters once.

Finally, many local public school districts across the country had complied with pre-AHERA law governing asbestos. After spending thousands of dollars for work which they believed had addressed the issue of the presence of asbestos in their school buildings, these districts found that passage of AHERA would force them to expend thousands more to comply with the new law. For these districts, the suggestion that they should issue a bond prior to adoption of final EPA regulations detailing the meets and bounds of their responsibilities was unrealistic.

C. SOME STATE LEGISLATURES ARE BEGINNING TO ACT ON LEGISLATION TO ASSIST SCHOOL DISTRICTS IN OBTAINING FINANCING FOR AHERA COMPLIANCE.

Not all local public school districts have the legal authority to raise revenues through the issuance of general obligation bonds. In some instances, the overwhelming financial burden to local school districts has forced the state legislature to reconsider the needs of school districts and to act on legislation which would open the door to general obligation bond issuance. Thus, in Kansas, the State House recently passed a bill to allow local school districts to issue general obligation bonds for the purpose of AHERA compliance. Passage of this measure by the Kansas State Senate is expected in late spring.

VII. ANALYSIS OF MANAGEMENT PLANS

A. THE ACT (SEC. 205[C]) ASSUMES THAT THE STATE GOVERNOR WILL REVIEW MANAGEMENT PLANS SUBMITTED BY SCHOOL DISTRICTS.

Both the Act and the regulations assume that the state governor, or his designee, will analyze and review management plans submitted by local school districts (sec. 205[c]). The purpose of the analysis and review is to provide some measure of assurance, to both EPA and local school districts, that the management plan was developed in conformity with the law.

Nevertheless, many states have reported that it will not be possible for the state designated agency to analyze and review all management plans submitted by local school districts in the time frame established by the Act. Designated agencies cite a lack of trained personal and financial resource, as well as the limited (90 day) timeframe in which they must process the plans. NSBA believes that failure by the state agency to thoroughly review each management plan will result in the needless implementation of faulty plans, and may thereby, pose unnecessary health risks to school children.

VIII. CONCLUSION

On the basis of the facts detailed herein, NSBA supports an eighteen month extension of the October 12, 1988 AHERA deadline. NSBA believes that a deadline extension would enhance, rather than detract from, the integrity of the Act by extending to both local public schools and state designated agency an opportunity to fully comply with each provision in a prudent and orderly fashion.

NSBA understands that some have suggested it is of no consequence if a school district, which is incapable of compliance with the October 12, 1988 AHERA

deadline despite all due diligence, is cited for non-compliance. This is so, they assert, because any fine imposed on a particular district shall be used to pay for the cost of compliance. Therefore, citations and fines do not "really" pose a significant threat to school districts. NSBA believes that this type of convoluted logic trivializes both the Act and the legal system.

Local public school districts wish to both work within and adhere to the law, not work around it. In that regard, we believe that when Congress passed AHERA that no one could predict the impact it would have on local public school districts, and that even today, the whole story is unknown.

However, we do know that certain assumptions were made which, at best, have proved inaccurate. There was no public sec[illegible]eady, willing and legally capable of taking on a nationwide campaign to [illegible]spect every school building and to develop a management plan for those buildings in less than seven months time. State legislatures did not rush to pass legislation which conformed to AHERA, nor have those legislative bodies responded to cure the inconsistencies that exist between state and federal asbestos mandates. The budgets of state designated agencies have not expanded to include the cost of additional personnel to analyze and review management plans.

The EPA AHERA regulations were generally unavailable until November, 1987. The EPA AHERA guidance document was received by many local school districts only last week. The EPA Model Plan for inspectors and management planners will not be final until April, 1988.

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NSBA believes that everyone, including local public school districts, have been diligently pursuing the AHERA mandates. Nevertheless, because the Act relied on the presence of factors outside the control of Congress (e.g., a geographically even distribution of private sector services, readily accessible public information, and state laws which conformed to AHERA), and because all of those factors did not, and do not currently exist nationwide, many local public school districts are incapable of compliance with the October 12, 1988 AHERA deadlines.

Therefore, NSBA urges this Committee and the United States Congress to allow the private sector, the states and local public school districts an opportunity to fully comply with AHERA in a reasonable and prudent manner by extending the October 12, 1988 deadline by eighteen (18) months.

The NSBA position is shared by the following organizations (as evidenced in our joint letter to the U.S. Senate [Attachment C]):

U.S. Catholic Conference
National Association of State Boards of Education
American Association of School Administrataors
National Association of Private Schools for Exceptional Children
Association of School Business Officials International
Agudath Israel of America
American Association of Christian Schools
Council for American Private Education

Attachment A

NSBA

EPA APPROVED TRAINING CENTERS FOR INSPECTORS AND MANAGEMENT PLANNERS

Training Provider	Certification Level
REGION I	
1. Con-Test Longmeadow, MA	Inspector/Management Planner (contingent)
2. Hygientics, Inc. Boston, MA	Inspector (contingent)
3. Institute for Environmental Education Woburn, MA	Inspector/Management Planner (contingent)
4. Tufts University Medford, MA	Inspector/Management Planner (full from 11/16/87)
REGION II	
5. Mid-Atlantic Asbestos Training Center Piscataway, NJ	Inspector/Management Planner (full from 11/16/87)
REGION III	
6. Temple University College of Engineering Philadelphia, PA	Inspector (full from 10/13/87) Management Planner (full from 11/16/87)
7. White Lung Association Baltimore, MD	Inspector/Management Planner (contingent)
REGION IV	
8. AHP Research, Inc. Marietta, GA	Inspector/Management Planner (full from 12/14/87)
9. BCM Converse Mobile, AL	Inspector (full from 11/01/87) Management Planner (full from 12/01/87)
10. COBB Corporate Center Marietta, GA	Inspector/Management Planner (contingent)
11. University of Florida Gainesville, FL	Inspector (contingent)

12.	Georgia Tech Research Institute Atlanta, GA	Inspector/Management Planner (full from 10/87)
REGION V		
13.	University of Cincinnati Medical Center Cincinnati, OH	Inspector/Management Planner (full from 11/16/87)
14.	DeLisle Consulting and Laboratories, Inc. Kalamazoo, MI	Inspector/Management Planner (contingent)
15.	University of Illinois Chicago, IL	Inspector/Management Planner (full from 10/21/87)
REGION VI		
16.	Texas A and M University College Station, TX	Inspector/Management Planner (full from 10/19/87)
17.	University of Texas at Arlington Arlington, TX	Inspector/Management Planner (full from 10/19/87)
REGION VII		
18.	Hall-Kimbrell Environmental Services Lawrence, KS	Inspector/Management Planner (full from 08/17/87)
19.	University of Kansas Overland Park, KS	Inspector/Management Planner (contingent)
REGION VIII		
20.	Rocky Mountain Center for Occupational & Environmental Health Salt Lake City, UT	Inspector/Management Planner (contingent)
REGION IX		
21.	Environmental Sciences Tucscon, AZ	Inspector/Management Planner (full from 10/05/87)
22.	University of California at Berkeley Berkeley, CA	Inspector/Management Planner (full from 11/16/87)
REGION X		
23.	Heavey Engineering, Inc. Stevenson, WA	Inspector/Management Planner (contingent)

Attachment B

NSBA

INSPECTOR AND MANAGEMENT PLANNER COURSE AVAILABILITY

University of Florida (Gainesville, FL)

Will offer three, five day courses for inspectors and management planners between March 2 and July 1, 1988 (March, April and May). Each course offering can accommodate 50 students. Although the University does not maintain a waiting list, the March class is currently filled.

Limited University resources preclude them from scheduling additional classes at this time.

Rocky Mountain Center for Occupational & Environmental Health (Salt Lake City, UT)

Will offer three, five day courses for inspectors and management planner between March 2 and July 1, 1988 (courses to be offered in March at Denver, CO; in May at Salt Lake City; and in June at Boise, ID). The University is the only program which serves the inter-mountain area. There are currently 10 persons on their waiting list for the March program at Denver, CO.

Texas A and M University (College Station, TX)

The University will offer three courses for inspectors between March 2 and June 1 (March, April and May). The University has not scheduled courses for the months of June and July. The University currently has a waiting list of 25-30 persons for their courses.

University of Texas at Arlington (Arlington, TX)

The University will offer four courses for inspectors and management planners at four different sites between March 2 and July 1, 1988. Although the University is not maintaing a waiting list, their classes in April are filled and, they have been forced to tell several applicants that they must take the course from another training center.

Con-Test, Inc. (Longmeadow, MA)

Con-Test is offering four courses between March 2 and July 1, 1988. Con-Test does have space available for all future courses. However, they advise that the classes fill quickly and that they do not have a cancellation experience.

Institute for Environmental Education (Woburn, MA)

The Institute will offer four courses to inspectors and management planners between March 2 and July 1, 1988. The Institute does have space available in all four of their programs.

Hygientics, Inc. (Boston, MA)

This corporation offers one to three courses per month for both inspectors and management planners. However, they have no established schedule and therefore, were unable to state with any certainty the dates of their course offerings.

University of California at Berkley (Berkley, CA)

The University will offer four courses between March 2 and July 1, 1988. The University has a lengthy waiting list for all course offerings and note that their classes fill up too rapidly to keep up with the enrollment demand.

AHP Research, Inc. (Marietta, GA)

This corporation will offer four courses between March 2 and July 1, 1988 to both inspectors and management planners. The corporation has course vacancies for all course offerings.

Georgia Institute of Technology (Atlanta, GA)

The Institute will offer two courses between March 2 and July 1, 1988 to both inspectors and management planners. Each course offered by the Institute can accommodate 90 students. However, the Institute has a waiting list for all course offerings of more than 50 percent the course size.

Tufts University (Medford, MA)

The University will offer seven courses to inspectors and management planners between March 2 and July 1, 1988. The University has a waiting list for all course offerings.

Hall-Kimbrall Environmental Services (Lawrence, KS)

The corporation will offer four courses between March 2 and July 1, 1988. The corporation has openings for all course offerings.

University of Kansas (Overland Park, KS)

The University will offer seven courses between March 2 and July 1, 1988. All course offerings are filled.

University of Illinois at Chicago (Chicago, IL)

The University will offer 10 courses for both inspectors and management planners between March 2 and July 1, 1988. The courses will be offerred both at Chicago and elsewhere. The University currently has 280 persons on the Chicago course waiting list; 320 persons on the waiting list for out-of-town course offerings.

Attachment C

March 15, 1988

The Honorable Max Baucus
United States Senate
Washington, D.C. 20510

Dear Senator Baucus:

RE: YOUR SUPPORT FOR EXTENSION OF ASBESTOS PLAN DEADLINES FOR SCHOOLS

The organizations listed below seek your support to enact legislation to extend the October 12, 1988 compliance deadlines contained in the **Asbestos Hazard Emergency Response Act of 1986 (AHERA)**. Our purpose is to protect the health of our school children and employees by allowing adequate time to implement **AHERA** safely and effectively.

Public and private elementary and secondary schools across the nation continue to use every resource available to them to comply with the deadlines contained in current law. Nevertheless, these schools have found that, based on objective circumstances beyond their control they are incapable of meeting the October 12, 1988 deadline. This is so for four reasons.

First, a significant number of schools are physically incapable of meeting the October 12, 1988 deadline contained in current law due to an unavailability of certified inspectors and accredited management planners in the private sector. Alternatively, schools that wish to self-manage these activities have found that the EPA certified courses currently available to school personnel cannot accommodate all course applicants by the October 12, 1988 deadline.

Secondly, in many parts of the country, an insufficient number of accredited laboratories are available to perform the sample testing required by the Act and the regulations by the October 12, 1988 deadline.

Third, a number of states enacted laws governing asbestos inspection, management, removal, and containment prior to passage of **AHERA**. In some instances, those state statutes conflict with the new Federal law, making it impossible for schools to at once comply with both state and Federal law absent passage of clarifying language by the state legislature.

Finally, the budget cycle of the majority of both public and private schools is based on a fiscal, rather than calendar year. The EPA did not make the **AHERA** regulations available until October 30, 1987. Therefore, many schools may, as a matter of **state law**, be unable to expend funds for inspection and management until after July 1, 1988.

We believe that extension of the October 12, 1988 deadline can only serve to enhance the integrity of AHERA by providing schools across the country with a reasonable opportunity to fully comply with each phase of the new Federal law. Therefore, we urge you to actively support passage of legislation to extend the October 12, 1988 AHERA deadlines.

Very truly yours,

National School Boards Association
U.S. Catholic Conference
National Association of State Boards of Education
American Association of School Administrators
National Association of Private Schools for Exceptional Children
Association of School Business Officials International
Agudath Israel of America
American Association of Christian Schools
Council for American Private Education

ASBESTOS HAZARD EMERGENCY RESPONSE ACT (AHERA) STATUS REPORT

March 15, 1988

Before the United States Senate Subcommittees
on Hazardous Wastes and Toxic Substances
and the Superfund and Environmental Oversight

Max Baucus, Chairman
Dave Durenberger, Ranking Minority Member

Washington, D.C.

by:

Steve M. Hays, P.E.
Ronald V. Gobbell, A.I.A.
C. William Echols, Jr., A.I.A.

GOBBELL HAYS PARTNERS, INC.

219 Fifth Avenue North
Nashville, Tennessee 37219

AHERA STATUS REPORT

I. BACKGROUND INFORMATION

According to the final rule of the Asbestos Hazard Emergency Response Act (AHERA), all public and private schools are required to identify asbestos-containing materials (ACM) in their respective schools and to take appropriate action(s) to control the release of asbestos fibers. This testimony of March 15, 1988, is a status report of AHERA's first ninety (90) days and shall generally address the following topics:

A. How is the "infrastructure" of inspectors, planners, designers, abatement workers and abatement contractors, and laboratories developing and progressing?

B. Are there geographic areas of the country where the "infrastructure" is better, or worse, able to address the requirements of AHERA?

C. Is the "infrastructure" itself competent and able to address the requirements of AHERA?

D. Are the more competent components of the "infrastructure" redirecting their efforts toward private, commercial buildings and away from public and private school buildings?

E. How valid are concerns among building owners and commercial lending institutions regarding the presence of asbestos in buildings, and are federal rules and regulations similar to AHERA needed for public and commercial buildings. If so, how and when should such rules and regulations be implemented?

Representing the technical aspects of AHERA is a senior manager of the firm of Gobbell Hays Partners, Inc (GHP) of Nashville, Tennessee. GHP is a multidisciplinary firm of registered architects, engineers and industrial hygienists who has specialized in the design of asbestos abatement for numerous public and private organizations. Mr. Steve M. Hays, P.E. was a member of the negotiating committee which set forth the rules implementing AHERA.

II. STATUS REPORT

A. How is the infrastructure developing and processing?

The five (5) Asbestos Information and Training Centers established by the EPA (located at the Georgia Institute of Technology in Atlanta, the University of Kansas in Kansas City, Tufts University in Medford, Massachusetts, the University of Chicago, and the University of California at Berkeley) have performed well and provide excellent basic, advanced, specialized and continuing education in the field of asbestos abatement. Since December, 1984, courses have been attended by more than 8,000 building owners and managers, maintenance personnel, school officials, architects, consultants, and abatement contractors.

Similar outstanding results have been observed through approved satellite training centers, and through private organizations such as the National Asbestos Council (NAC) and the Association of Wall and Ceiling Industries (AWCI). Additionally, through the National Institute of Building Sciences (NIBS) general and technical specifications have been developed regarding asbestos encapsulation, enclosure and removal. The use and acceptance of these NIBS documents by abatement designers and contractors has grown significantly and is rapidly becoming the industry standard.

Concurrent with the growing concern and awareness of asbestos in buildings, the American Institute of Architects (AIA) has in its latest (1987) contract documents publications strongly, and directly, addressed the potential for asbestos in buildings planned for demolition, expansion, renovation, etc. For the first time, the owner-architect agreement, the owner-contractor agreement, general conditions for construction etc. specifically note the need to locate and confirm the presence of suspect asbestos-containing building materials (ACBM). One most important aspect of one document is the contract provision directing the contractor to immediately stop work should suspect material be encountered.

While the AIA has taken this important step in providing standard, well respected documents that mandate the recognition of asbestos, it has taken an even more important step by leaving to others the training and educating of asbestos awareness and abatement. Thus, the private sector would appear to be moving in a coordinated, but non-overlapping manner to endeavor to recognize the dangers associated with the uncontrolled release of asbestos fibers.

As to the EPA accreditation plan to certify inspectors, planners, designers, workers, and contractors, the demand for certification has fully outstripped the availability of classes and available qualified instructors. As such, only a minimal number of certified inspectors and planners are currently available in the work place to perform the required services. As further described and explained in this Report, the competence of available personnel is addressed.

Concurrently, many LEA's are just now moving to understand AHERA's impact and to recognize the need for certified inspectors and planners. This late awareness, coupled with any public agency's need to receive competitive proposals to hire the necessary certified inspectors and planners may be creating an artificial and temporary demand which could compromise the effective delivery of the inspections and management plans. This demand will peak most likely in mid-summer as inspections are conducted during school closures and again in September as management plans are presented to School Boards, Parent Teacher Organizations, etc. for review and approval prior to transmittal to the State agency designated to receive the management plans.

Further compromising and diluting the inspection and planner process will be the laboratory analysis of literally millions of bulk samples. While nearly all laboratories have personnel trained in the various disciplines, it must be remembered that abatement work will continue this summer at numerous schools under increased technology for air clearances by Transmission Electron Microscopy (TEM), in continued association with on-site air monitoring by Phase Contrast Microscopy (PCM), and must be coordinated with routine air monitoring surveillance started by many LEA's under earlier asbestos awareness programs. It, therefore, becomes prudent to note with concern the rapid growth in demand for qualified laboratory services that have and are participating in the bulk sampling accreditation program of the National Bureau of Standards (NBS) of the U.S. Department of Commerce.

In summary, the EPA-established training centers, their respective satellites, and the growing private sector qualified training institutes are doing an excellent job of preparing the infrastructure to meet the AHERA requirements. Unfortunately, the demands of the time schedule and need for certified, as well as qualified and experienced, inspectors, planners, and laboratories is far outstripping the supply.

Because no management plans have yet been submitted, and therefore available for examination and study by the EPA, no actual or accurate data is available to conclusively report acceptable development and progression of the infrastructure.

B. Are there any geographic areas where the "infrastructure" is better, or worse, able to address AHERA?

The most straightforward answer to this most relevant question is "Yes". This circumstance is not, however, any more directly related to, or caused by, AHERA. Traditionally, areas of the country have always been better prepared to deal with new and different regulations requiring trained or experienced personnel or companies.

This history of "imbalance" can be traced to the following general categories:

"Enlightenment" of asbestos issues of the affected populous most directly involved;

Less populated areas vs. more populated areas (i.e. rural vs. urban, small town vs. city, etc.); and

Progressive stature of the governing bodies, and their abilities and desires to comply.

Documented cases are available to support almost any position to be taken. Under AHERA, however, all LEA's are obligated to perform a uniform inspection and prepare standard format management plans by certificated inspectors and planners. This approach dramatically and immediately adjusts any past imbalance. AHERA should be applauded in its universal and even application.

Unfortunately, as noted elsewhere in this Report, the demand far exceeds supply and presents the greatest impact that certain less populated areas will receive the attention of competent, certified inspectors and managers. Similarly, it becomes difficult to address the needs in areas of less "enlightenment" to the hazards of asbestos and for those areas where the progressive nature of the governing bodies could reduce the effectiveness of AHERA.

In summary, it must be recognized, but not accepted, that certain areas of the country may not be as able to address the AHERA regulations. The solution may lie in the joint efforts of EPA working at a national level and state level, coupled with the private sectors entrepreneurial desire to explore and develop new markets as the system of supply and demand seeks a balance in the market place.

C. Is the "infrastructure" competent to address AHERA?

As already addressed in this Report, the EPA accreditation program through its established training centers, their satellites, and training through other private sector organizations is proceeding well, but behind in meeting demand. In part, the concern addressed by this question is driven by the very apparent demand for training and certification by anyone even slightly interested in the hazards of asbestos.

To best answer this question, it is necessary to define the basis for competence:

Training can and is accomplished by attending and successfully passing an approved course and test. While the model accreditation program suggested a criteria of experience or education as a prerequisite to accreditation, it was not mandated at the federal level, but left to individual states if they so desire. Thus, the

unfortunate opportunity clearly exists that inexperienced and uneducated (in building sciences) persons can attend and pass the required tests and fulfill the requirements for certification. It should be clear from the rules that EPA did not intend to define competence by the simple passage of tests and attending seminars, but under the strict reading of the rules, it is all that is required at the federal level.

Educated in building sciences as degreed or registered architects, engineers, consultants, etc., is clearly an important element in the definition of competent infrastructure. In close association under this category would be degreed industrial hygienists and certified industrial hygienists experienced in building construction and design.

Experience in any endeavor can never be overstated; this holds true particularly in the asbestos industry. Experience in all phases of asbestos awareness and abatement is a basic necessity in defining an acceptable level of competence. Previous "hands-on" sample gathering and preparation of operations and maintenance/management plans, and design and abatement is without question a level of competence anticipated by EPA in its development of the model accreditation program.

While the definition of competence is generally associated with technical abilities, as more firms and persons enter the market with no experience or education in the business of asbestos inspection and management, the concern must be addressed in defining the "competent" level of cost of services. This Report has already addressed most strongly the concern over demand and available supply, thus the concern over cost must also come into play in evaluating a business's ability to perform and deliver the contracted product or service. In selecting consultants based upon certification, LEA's would best be served by also examining experience and education in building sciences and in a company's "staying power" to deliver the product and be available in the future when LEA's enact their routine monitoring program and the mandated re-inspection/planning in three (3) years.

In summary, competent infrastructure is available and working to assist LEA's in meeting the full intent of AHERA. On the other hand, the competence of many "new" companies may lack in technical abilities and in business "staying power". Concern is heightening over the lack of experience and education currently entering the asbestos consulting market, although these persons have completed the certification training as stated in AHERA.

LEA's are experienced purchasers of goods and services, and are experienced in hiring and developing staff members and teachers, and in the basic business of educating. They would be well advised to maintain their proven procedures when examining the qualifications of firms proposing to provide AHERA services. Obviously certification must be held, but the basis of experience and education of building sciences must also be held to be a part of defining competence.

D. Are the competent components of the "infrastructure" (re)directing their efforts toward the private building owners?

Based upon examination of trends over the past two (2) years, the answer must be "Yes". Several factors, as listed below, support this point:

General and technical awareness of asbestos hazards by the private building owners and managers;

General awareness of asbestos hazards by the general public and private building occupants;

Technical awareness of asbestos hazards by architects, engineers, contractors, etc. who may run the risk of exposure during renovation projects;

Attitude of private building owners and managers to hire only experienced and educated "professionals" with proven track records; and

Attitude of "infrastructure" to expand their base of operation and client list, and to move on to more complex and costly projects.

In many respects the exit of the more competent infrastructure to the private sector is a direct result of EPA's continuing efforts to advise, educate and alert the general public to the hazards of asbestos. EPA can in fact measure its success by the growth of private, voluntary asbestos abatement programs. Similarly, the technical abilities of architects, engineers, industrial hygienists, etc. has also risen to a higher level of awareness and desire to solve the associated problems with asbestos-containing building materials. Fortunately for owners of high rise buildings with complex HVAC systems and high occupancy rates, the competent infrastructure has gained many valuable years addressing asbestos in schools. Supporting this need for more highly trained and experienced designers and contractors are support elements of the infrastructure regarding qualified labs and new highly specialized equipment for removing asbestos and controlling fibers.

As such, the demand for "very" competent infrastructure from a relatively low supply of "general" infrastructure has caused a shift in market segments to the private building owners and managers. It can, therefore, be generally held that school abatement projects have been an excellent training experience for designers, contractors, labs, equipment suppliers, etc. as each works to expand its market potential.

The elements of this market shift closely parallel the EPA's efforts over the past ten (10) years to address asbestos in schools. EPA and LEA's did not wait for AHERA to begin asbestos abatement programs; justifiably, neither should the private sector wait. But, in the final

analysis, as it eventually took AHERA and its national application to LEA's, it most likely will take a similar private-sector AHERA to inspect and plan abatement projects for private building owners and managers.

In summary, the shift will occur, and must occur, as the entire asbestos abatement industry moves through the product cycle of development. The task at hand for all members of the infrastructure is to establish clear levels of competence that more equitably addresses the industry's needs. For the immediate future, more data is needed on both the success of AHERA and the progression of asbestos abatement for the private building owners before application to other sectors. The two tasks to study these important elements can easily parallel each other and should be able to conclude at a similar future date so joint evaluation and/or implementation can take place.

E. Are private building owners concerned with asbestos, and are rules similar to AHERA needed for public and commercial buildings; if so, when and how?

As described above, the answer must be "Yes". The hazards of asbestos apply themselves equally to all humans and should be addressed uniformly. Timing and establishment of applicable rules must, however, not diminish the excellent forward motion of the AHERA regulations and their application to schools.

Thus, EPA, with the assistance of private building owners, and representatives of competent infrastructure, should allow the following to occur:

Allow AHERA to perform its assigned responsibilities and be tested before application to other sectors;

Compile a comprehensive database on the health issues of asbestos in the wide variety of private sector buildings;

Allow the infrastructure and LEA's an opportunity to "look back" on AHERA after the basic inspection and planning has been done to enable a close look at what work product has been produced and what purpose does it serve; and

Allow the private building owners and managers the opportunity to observe AHERA and to "test" their abilities to receive and implement a similar AHERA program.

In summary, "Yes" a private and commercial building AHERA should be implemented, but only after AHERA (in school buildings) has had an opportunity to be tested, and private building owners have had the time to review the cost impacts of the AHERA program.

III. CONCLUSIONS

This Report has attempted to address events leading up to AHERA, the current status of AHERA, and the results and impacts of AHERA. These points can be summarized below:

A. The "infrastructure" of asbestos abatement inspectors, planners, designers, workers, contractors and laboratories is progressing well. The training centers are effective and well supported by private training institutions and centers. The general awareness and technical aspects have risen to a new higher level of respect among the leading organizations in the general design and construction industry. It is expected that this development and progression of competent infrastructure will continue.

B. Because of the very nature and diversity of the country and its imbalance of population and cities, there are geographic areas where the infrastructure is better, or worse, than other areas. By its design, AHERA will attract new infrastructure and/or expand existing infrastructure. The balance and attraction must, however, be left to the business of supply and demand and basic economics of cost of goods and services, but subject to review by EPA for analysis and application to the private buildings.

C. The "infrastructure" itself is generally competent as defined by training (EPA certification), experience (previous asbestos abatement work in respective field) and education (in the building sciences field - architects, engineers, consultants, etc.). It must, however, be noted that rapid expansion of the supply of certificated workers to meet the demands of the compliance date will dramatically reduce the competence factor and should be closely watched by LEA's, states, EPA, and the infrastructure itself.

D. As the industry expands, more of the competent infrastructure will be moving from schools to private buildings. This movement is two-fold:

   development of experience by competent infrastructure, and the desire to apply these learned skills on more complex projects; and

   the demand by private building owners for more competent infrastructure to address and solve complex circumstances in occupied buildings.

E. The concern with asbestos in private buildings is growing and affecting real estate transactions. There are numerous instances where the purchase price of commercial buildings has been dramatically discounted to offset the

removal of ACBM. Conversely, asbestos surveys and inspections are being performed on buildings less than three (3) years old because of the real fear of asbestos presence and contamination.

To overcome this imbalance, similar AHERA rules will need to be carefully and competently designed and applied for private and commercial buildings. In the meanwhile, AHERA (for schools) must be given the opportunity to be applied and evaluated, and the private building owners must similarly be allowed to evaluate AHERA from "afar" to enable the learning curve to take effect before application to commercial buildings.

END OF REPORT

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TESTIMONY OF THE

SAFE BUILDINGS ALLIANCE

ON THE

ASBESTOS HAZARD EMERGENCY RESPONSE ACT

AND

EPA'S PUBLIC AND COMMERCIAL BUILDINGS STUDY

BEFORE THE

SUBCOMMITTEE ON HAZARDOUS WASTES AND TOXIC SUBSTANCES

U.S. SENATE

JOHN F. WELCH
PRESIDENT
SAFE BUILDINGS ALLIANCE

March 15, 1988

I am John Welch, president of the Safe Buildings Alliance (SBA), an association of leading building products companies which formerly manufactured asbestos-containing materials. SBA is pleased to have this opportunity to testify on implementation of the Asbestos Hazard Emergency Response Act (AHERA).

SBA shares Congress' concerns about the infrastructure of properly trained contractors to carry out AHERA safely. Since its formation in 1984, the Alliance has worked with federal, state and local governments to develop regulations that objectively define: when asbestos-containing materials are safe or hazardous; what response actions are appropriate; and who ought to carry out the actions. Along with labor unions and other parties, we have actively promoted comprehensive training and accreditation laws for asbestos inspectors, contractors and workers in many states.

Unfortunately, nothing seems to change on this issue. On July 18, 1985, Congress made the following observations:

> The school asbestos abatement program, which was initiated less than one year ago, faces institutional problems of monumental proportions. First, the panic surrounding asbestos in buildings has made rational decisions over abatement action impossible in many cases. Second, the public is confused over what kind of asbestos applications present real health risks and in what situations asbestos-containing materials are best left undisturbed. Third, the current demand for abatement work far exceeds the supply of reliable, trained contractors. This situation has been highlighted by EPA and other experts warning that the **majority** of contractors are inexperienced and unqualified. (emphasis in original)

These same problems are still with us today: not enough qualified inspectors and contractors; slipshod laboratories; unreliable methods to determine when asbestos material should or should not be removed; and removals that increase, rather than decrease asbestos exposures in schools. The resources available today to perform asbestos work are either so scarce or so scary that we are creating public health problems rather than controlling them.

"The Supply of Reliable, Trained Contractors"

What was a state-by-state disgrace in 1985 is a national disaster in 1988. The real supply of "reliable, trained contractors" is anyone's guess. Given our concern that workers be protected from shoddy abatement work, we contacted state officials to determine the status of their programs. That survey (attached) and another recently released report by the National Council of State Legislatures (NCSL) paint a bleak picture:

- 36% of the states don't have <u>any</u> accreditation laws for abatement contractors and workers, much less school contractors and workers.
- Fewer than half (47%) of these laws require the applicant to pass an exam.
- Only 12½% of these states require proof of liability insurance.
- Only 11 states require accreditation of inspectors, management planners or project safety monitors doing abatement work in non-school buildings.

Contractor availability ranges from the sublime -- 18,000 "certified" contractors in New Mexico -- to the ridiculous -- 28 states have no certified contractors or the numbers are not available to schools, the Alliance or, apparently, anyone else.

New Jersey was one of the first states to implement comprehensive training, licensure and abatement performance laws. Yet, as of March 9, only 12 AHERA-accredited "assessors" (inspectors) were available to do work for over 3,000 local education agencies.

A New Problem: "Asbestos Mills"

The slipshod performance of private medical labs, the so-called "Pap mills" who misdiagnose cancer, has been prominent in the news lately. The same problems appear to exist for the most fundamental diagnostic test for schools and other buildings -- the presence or absence of asbestos in building products.

Four years ago, unsophisticated "blow torch labs" burned up building materials to determine whether asbestos was present. To its credit, EPA has since conducted a voluntary program to evaluate the performance of labs which analyze asbestos bulk samples with microscopes. Here's how it works. EPA sends four "unknown" materials to labs, which analyze the samples to make a "positive" or "negative" (i.e. above or below 1%) identification for asbestos. The labs send their identifications to an EPA contractor for scoring; the results are published.

Results from the last two rounds of testing are alarming. EPA's August 1987 round found:

- Only 57% of the labs could always determine correctly that asbestos was present or absent in four samples.
- 15% of the labs don't score better than a coin-flip.
- 27% of the labs are right on 3 samples out of 4.

If this round had been used for AHERA accreditation, nearly half of the labs in the country would have flunked.

We understand that this was a purposefully difficult round. But we don't understand why the Agency made the next round, the first AHERA accreditation round (January 1988), so easy (samples were 100% asbestos tape, a 100% plastic product, 35% asbestos insulation, and a 3% asbestos material). In spite of those easy samples, approximately one lab out of seven failed to identify correctly all four samples.

These laboratory results do not augur well for the far more technically difficult tasks ahead -- air monitoring and analysis to ensure worker protection and, more importantly, to determine whether children and teachers can safely reenter schools after abatement projects.

Confusion About "What Situations Asbestos-Containing Materials Are Best Left Undisturbed"

As part of its Report to Congress on Public and Commercial Buildings, EPA tested whether trained inspectors could consistently and reliably assess the condition of asbestos materials. A visual assessment method virtually identical to those commonly used in school inspections was field-tested. The inspectors were trained by EPA's most experienced training center.

EPA's study found that even the four "accredited" inspectors who assessed materials:

- Disagreed with each other 95 percent of the time on the three simple factors (material condition, its accessibility and whether in an airflow) commonly used in combination to make abatement recommendations to schools.
- Could not agree 67% of the time whether material was in "good," "moderately damaged" or "significantly damaged" condition.
- Disagreed 77% of the time on whether the material's potential for damage was "low," "moderate" or "high."

Because EPA's new asbestos-in-schools regulations rely on the same factors and inspectors' judgements, these findings should be an unmistakable caution signal. EPA's Report to Congress notes only parenthetically that the condition of asbestos material is not a valid indicator of risk.

EPA's Report to Congress on Public and Commercial Buildings

The important information in the Report is often buried, while the unimportant is highlighted.

The report fails to emphasize the results of a study requested by Congress -- a comprehensive, state-of-the-art air monitoring study of 49 buildings operated by the General Services Administration. Even though 37 of the 49 buildings had materials classified as "significantly damaged" or had many areas of "moderately damaged" material, and even though EPA monitored in the immediate area of damaged materials, airborne asbestos levels did not differ significantly between areas with material in "good" or "bad" condition, or between indoor and outdoor air.

As the attached chart shows, exposure levels in these buildings are thousands of times lower than any existing regulatory standards.

The Health Effects of Low Level Exposures to Asbestos

The scientific evidence on the health effects of low-level exposure to asbestos is simple, consistent and compelling. Study after study has shown that airborne asbestos levels <u>inside</u> buildings with asbestos materials are at or near levels in <u>outside</u> air. Because prevailing exposures are so low, experts worldwide have concluded that building occupants are not at significant risk. At the same time, these same experts express serious concerns about elevated exposures from asbestos removals.

The following expert scientists or studies have concluded that indoor asbestos exposures in the vast majority of buildings are not significantly different than outside air:

Dr. Arthur Langer (Mt. Sinai School of Medicine)

Dr. William Nicholson (Mt. Sinai School of Medicine)*

Dr. Marvin Kuschner (State University of New York, School of Medicine)*

Dr. John M. Dement (National Institute of Environmental Health Sciences)*

Dr. Gilbert S. Omenn (University of Washington, School of Public Health and Community Medicine)*

Dr. James Merchant (University of Iowa, Preventive Medicine)*

Dr. Edwin Boatman (University of Washington, School of Public Health and Community Medicine)*

Dr. Linda Rosenstock (University of Washington, Department of Medicine)*

Professor Julian Peto (University of London, Institute of Cancer Research, England)

British Department of Environment

British Health and Safety Executive

National Institute of Occupational Safety and Health (150 asbestos in buildings evaluations)

Ontario Royal Commission on Matters of Health and Safety Related to the Use of Asbestos

EPA's studies of individual schools and 49 GSA Buildings

Study of asbestos levels in 61 school buildings (in press)

*Views published by the National Institute of Environmental Health Sciences.

The following scientists or expert groups have concluded that low level asbestos exposures pose negligible risks to building occupants:

Drs. Hans Weill and Janet Hughes (Tulane University School of Medicine)

Dr. Ronald Crystal (National Institutes of Health)

Dr. Brooke Mossman (University of Vermont, College of Medicine)

Dr. Morton Corn (Johns-Hopkins University, School of Hygiene and Public Health)

Sir Richard Doll (University of Oxford, Emeritus Professor of Medicine)

Professor Julian Peto (University of London, Professor of Epidemiology)

Dr. Andrew Churg (University of British Columbia, Department of Pathology)

Ontario Royal Commission

British Department of Environment

British Health and Safety Executive

EPA's Report to Congress appears to accept the reality that prevailing exposures in buildings are very low. The Agency continues, as it has often in the past, to express concern about the potential for "peak" exposures. Such peaks might occur when, for example, maintenance workers disturb asbestos-containing materials. This is a concern SBA has shared for many years and is reflected in our encouragement of operations and maintenance programs -- whose primary purpose is prevention of such occurrences.

EPA's Report also recognizes that the Agency has "virtually no data" on the existence of peak exposures and

"no data" on whether peaks contribute to long-term average exposures. Actually, the Agency does have some data on the latter issue. It was provided last fall, as part of the AHERA rulemaking, with the results of an analysis of 219 air samples in 61 schools that found no evidence in this large data base of any contribution of peaks to long term average exposure levels.

EPA needs to spend more time and effort researching the biggest peak exposure -- asbestos removal. What we already know is scary: clouds of asbestos are released, containment barriers leak; and clean-up is extremely difficult. The Agency's own studies consistently show that asbestos exposure levels in schools increase after asbestos materials are ripped out. Some of these projects were supervised by EPA. A recent British study concludes that asbestos levels may remain elevated for ten months or more.

In sum, the absence of evidence that prevailing exposures in building pose any significant risk to occupants is becoming more and more an accepted fact. At the same time, studies on asbestos exposures during and after removal projects show that exposures may be increased for many months.

The Alliance commends this subcommittee for its thoughtful and timely oversight of this important public health issue. We look forward to the opportunity to work with Congress on this and other legislative matters regarding asbestos materials in buildings.

STATE SURVEY OF ASBESTOS WORKERS CERTIFICATION PROGRAM

December 15, 1987

The following is a summary of asbestos worker certification programs in the 50 states. All the background information (state statutes and regulations) is available upon request.

27 states have certification programs

4 of these state programs are in compliance with AHERA

35 states have legislative plans to bring state programs into compliance with AHERA

If all 35 states pass legislation in 1988 this will mean that 39 states will be in compliance with AHERA

11 (eleven) states still will not have contractor certification statutes or regulations

28 states have no (0) certified contractors as of December 15 or the numbers are not available

22 states have some certified contractors

8 states have 50 or fewer certified contractors

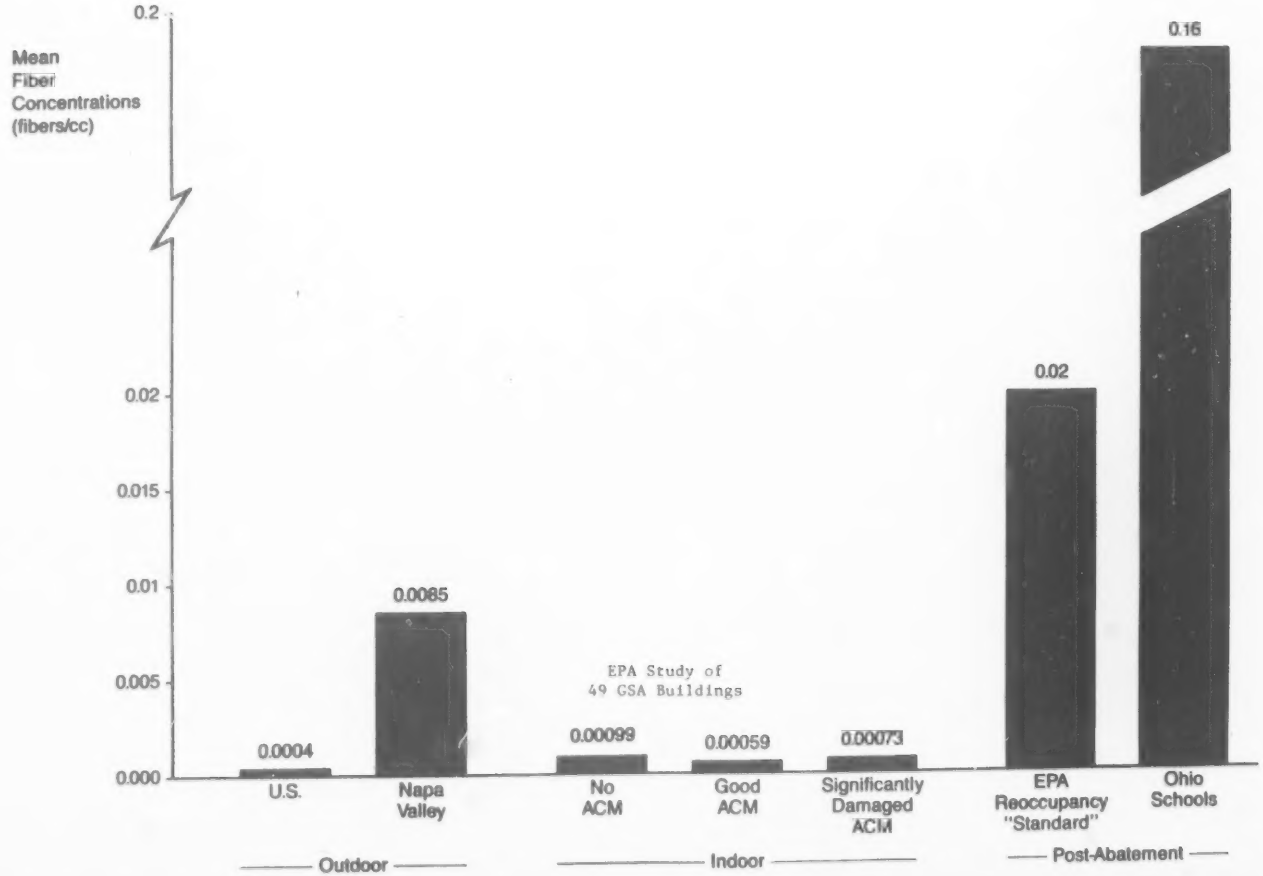
National Overview of Asbestos Worker Certification Requirements

	AHERA Deadline	Enabling Legislation in Place	Rules Promulgated	Accreditation Program in Place	Accreditation Program in Compliance with AHERA	Legislative Plans to Establish Accreditation Program to Comply with AHERA	Legislation Pending	Rules Pending	Reciprocity	Number of Certified Contractors
ALABAMA	8/88				X					N/A
ALASKA	7/89	X	X	X	X					1,500
ARIZONA	7/88				X					N/A
ARKANSAS	7/89	X	X	X	X				X	55
CALIFORNIA	7/89	X	X	X	X					N/A
COLORADO	7/88	X	X	X	X	X	X			N/A
CONNECTICUT	8/88	X					X	X		-0-
DELAWARE	7/89	X	X	X	X			X		30
FLORIDA	10/88	X			X		X			-0-
GEORGIA	7/89	X	X	X				X		80
HAWAII	7/89	X					X			N/A
IDAHO	7/88									N/A
ILLINOIS	7/89	X	X	X	X	X			X	67
INDIANA	7/88				X					N/A
IOWA	7/89	X	X	X		X		X		40
KANSAS	7/89	X	X	X		X		X		52
KENTUCKY	7/88	X	X	X		X				-0-
LOUISIANA	10/88	X				X		X	X	95
MAINE	7/89	X	X	X		X		X		33
MARYLAND	7/88	X	X	X		X		X		230
MASSACHUSETTS	7/88	X	X	X	X				X	-0-
MICHIGAN	7/89	X	X	X		X	X			145
MINNESOTA	8/89	X				X		X		N/A
MISSISSIPPI	7/88	X	X	X		X				3,000
MISSOURI	7/88	X	X	X		X	X			N/A
MONTANA	7/89									-0-
NEBRASKA	7/89	X				X		X		N/A
NEVADA	7/89						X			N/A
NEW HAMPSHIRE	7/88	X	X			X			X	-0-
NEW JERSEY	7/88	X	X	X		NA				N/A
NEW MEXICO	7/88	X	X	X						18,000
NEW YORK	7/89	X	X	X						N/A
NORTH CAROLINA	12/89	X	X	X		X				-0-
NORTH DAKOTA	7/89	X				X		X		-0-
OHIO	7/89	X	X	X		X		X		134

(Continued)

	AHERA Deadline	Enabling Legislation in Place	Rules Promulgated	Accreditation Program in Place	Accreditation Program in Compliance with AHERA	Legislative Plans to Establish Accreditation Program in Compliance with AHERA	Legislation Pending	Rules Pending	Reciprocity	Number of Certified Contractors
OKLAHOMA	7/89	X	X	X	X				X	60
OREGON	7/89	X				X		X		20
PENNSYLVANIA	7/89									-0-
RHODE ISLAND	7/89	X	X	X		X		X		35
SOUTH CAROLINA	7/89	X	X	X		X		X		100+
SOUTH DAKOTA	7/88					X				-0-
TENNESSEE	7/89	X	X	X		X				10,000
TEXAS	7/89	X				X		X		-0-
UTAH	7/88	X				X		X	X	-0-
VERMONT	7/89	X	X			X			X	15
VIRGINIA	7/88	X		X		X		X		50
WASHINGTON	7/89	X	X	X						50
WEST VIRGINIA	7/89					X				-0-
WISCONSIN	7/89	X			X			X		-0-
WYOMING	8/88									-0-

AIRBORNE ASBESTOS LEVELS IN BUILDINGS



PROPER INSURANCE; A MUST FOR ASBESTOS ABATEMENT PROJECTS

STATEMENT BY RICHARD C. McDONOUGH,

EXECUTIVE VICE PRESIDENT FOR REGULATORY AFFAIRS

OF FIDELITY ENVIRONMENTAL INSURANCE COMPANY,

BEFORE THE HAZARDOUS WASTES AND TOXIC SUBSTANCES

AND THE SUPERFUND AND ENVIRONMENTAL OVERSIGHT SUBCOMMITTEES

OF THE SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE

MARCH 15, 1988

84-404 O - 7

GOOD MORNING!

My name is Richard C. McDonough; I am the Executive Vice President for Regulatory Affairs of Fidelity Environmental Insurance Company (FEIC). FEIC is a New Jersey licensed stock insurance company headquartered at 600 Alexander Road, Princeton, New Jersey. FEIC was started with an initial capital and surplus of $10 million and it is able write insurance in all 50 states in one of three ways: as an admitted carrier, as an excess and surplus lines carrier, or pursuant to the provisions of the Federal Liability Risk Retention Act of 1986 (RRA). To take advantage of RRA, a New Jersey not-for-profit purchasing group, Professional Environmental Contractors, Inc. (PECI), has been formed and all contractors insured by FEIC must be members of PECI.

James J. Sheeran and myself, both former New Jersey Insurance Commissioners, organized FEIC and PECI specifically to provide the asbestos abatement industry with the highest quality insurance coverage possible. Perhaps the most unique aspect of FEIC's operation is the type of policy it writes for this type of work: an occurrence form policy providing $1 million of coverage in the aggregate, either an annual aggregate or, more importantly, a per job aggregate. This represents the most comprehensive coverage currently available for asbestos abatement projects.

FEIC believes that proper work procedures are the key to minimizing long-term liability problems for both the building owner and the asbestos abatement contractor. For this reason, all contractors insured by FEIC must qualify for membership in the PECI trade association. To qualify for membership, the contractor must

demonstrate financial strength and stability and meet the highest loss-control standards. FEIC has established stringent work procedures and guidelines which contractors are required to follow. The company has also established a staff of trained loss-control inspectors who rigorously monitor insured work sites to ensure that the contractor's work performance is of the highest quality. This program of job site inspections makes FEIC different from almost every other insurance company in the field.

All parties involved in asbestos abatement work must be concerned about the type and quality of insurance coverage available for their projects. However, understanding asbestos abatement insurance can be a formidable task for laymen. Industry studies completed in late 1987 found that building owners, architects, consultants and contractors considered insurance to be the single most confusing aspect of the asbestos abatement process. The studies also found that 70% of those same parties did not know the differences--or the implications of those differences--between the various kinds of policies now being sold to the asbestos abatement market.

The Asbestos Hazard Emergency Response Act (AHERA), and regulations promulgated thereunder, require contractors removing asbestos from public and private school buildings to have liability insurance to assure compensation for those persons who may become afflicted with asbestos related illnesses in the future due to the contractor's negligence. Liability involves the contractors' responsibility to third parties who may be exposed to asbestos during the removal process and also extends beyond the completion

of the work to involve persons who occupy, visit and otherwise use the site.

Asbestos-containing construction materials present a potential risk because they can release airborne contamination that may be inhaled by building users. The primary purpose of an asbestos removal project is to eliminate the potential for airborne hazards by eliminating the asbestos-containing materials which can cause them.

However, the process of asbestos removal involves heavy demolition as well as complex area isolation and air engineering procedures. If not planned, monitored and performed correctly, asbestos control work can spread significant amounts of airborne asbestos contamination throughout a building. This sort of contamination is an aerosol made up of microscopic asbestos fibers which are invisible to the human eye and able to remain aloft indefinitely.

Persons who visit or reoccupy such a contaminated building may later seek legal redress against the contractor, architect, building owner and others who are alleged to be responsible for injuries ultimately related to faulty asbestos abatement work.

For this reason, asbestos contractors, building owners, real estate managers, architects and others involved in asbestos abatement work need to be concerned about the adequacy of their insurance coverage. While insurance is always a serious consideration in the building-related trades, it is particularly important when asbestos is involved because of the peculiar, delayed-reaction liability problems associated with the substance.

Exposure to airborne asbestos has no immediate apparent effect, yet can begin a slow biological process resulting in health problems decades later. Keep in mind that the asbestos-related law suits which began making headlines in the 1970s involved exposures which had occurred as far back as the 1940's. It has taken as long as 30 years for health problems--and the attendant legal liabilities--to manifest themselves.

This potential for delayed-reaction asbestos exposure response is a very important concept to understand when you evaluate various types of insurance. In practical terms, the only kind of meaningful insurance coverage for asbestos-related projects today is coverage that will be in effect years from now, when it may actually be needed.

There are basically four categories or types of insurance policies which provide coverage for liabilities which can result after an asbestos removal project has been completed: claims made coverage with an annual aggregate limit of liability; occurrence coverage with an annual aggregate limit of liability shared by an association; occurrence coverage with an annual aggregate limit of liability for an individual insured contractor; and occurrence coverage with a separate "per job" aggregate limit of liability.

Claims made coverage requires that a claim or suit be made and brought against an insured contractor during the policy period; claims made subsequent to the policy period will not be covered unless the policy is continuously renewed into the future. Many of the policies currently being advertised and sold for asbestos abatement work are "claims made" and, unfortunately, do not provide

extended, permanent coverage. In fact, these policies end their coverage shortly after the actual asbestos abatement project is completed and decades before any potential liabilities can be expected to arise. (See Exhibit A) Coverage can only continue if premiums are paid annually by the contractor and the policy is re-evaluated and re-approved each time by the insurance carrier; however, as time marches on and asbestos long latency claims begin to be filed, it is unlikely that these claims made policies will be renewed.

Normally, claims made policies provide for potential long tail claims by offering an extended reporting endorsement. This in effect converts a claims made policy to an occurrence policy. Such an extended reporting endorsement is not available at the present time for asbestos abatement contractors.

To illustrate the inadequacy of claims made coverage in the context of asbestos abatement liability, let us assume that an asbestos removal contractor completes 50 projects a year in 1988, 1989, 1990, 1991 and 1992. To comply with contractual insurance requirements, the contractor purchases a claims made policy in each year of operation from the same insurance company, with each subsequent policy having a "retroactive date" going back to the inception date of the earliest (1988) policy. In 1988, there will be potentially 50 projects which might generate claims so long as the claims are actually brought during the policy period. However, in 1989, because coverage under the 1988 policy has expired, there will be potentially 100 projects (the 1988 and 1989 jobs) which might generate claims under the 1989 policy. In 1990, there will

be 150 projects which could generate claims under one policy. In 1991, there will be 200 projects. And in 1992, there will be 250 projects which potentially generate claims under one policy. In 1993, the policy is not renewed; therefore, there will be no coverage under any of the five policies issued to the contractor for any claims made after the 1992 policy expires which arise out of their 250 asbestos removal projects. (See Exhibit B)

Claims made coverage is acceptable for some types of commercial risks. However, because of the nature of asbestos-related injuries, which probably will not manifest themselves for 20 to 25 years and the attendant liability associated with same, a "claims made" policy is illusory.

Occurrence coverage, on the other hand, is far superior to claims made and provides protection regardless of when a claim or suit is made and brought against an insured contractor. Coverage begins with the asbestos abatement project and continues in effect throughout future decades when asbestos related injuries may manifest themselves. All that is required is that asbestos-related bodily injury "occur" during the policy period. The bodily injury must be caused by an "occurrence" which is "an accident, including continuous or repeated exposure to substantially the same general conditions". In effect, asbestos injuries which become manifest and are discovered at a future date must be caused by exposures to asbestos during the policy period which arise out of a contractor's abatement work. Until recently, such occurrence insurance was just about impossible to obtain if you were an asbestos removal contractor. However, even though occurrence coverage is now

available on a limited basis, not all occurrence policies are the same.

Occurrence coverage with an annual aggregate limit of liability shared by association members was and is one of the earliest attempts to provide occurrence insurance to asbestos removal contractors. The coverage is made available to an association or pool of contractors who meet certain qualifying criteria. However, the aggregate limit of liability is shared by all members of the association for all asbestos removal projects completed by the members during the policy period. As an example, if there were 50 association contractors, each of whom performed 20 asbestos removal projects during the policy period, there could be 1000 projects for which a single annual aggregate limit of liability (usually $1 million) would have to respond to a potentially large group of asbestos claimants. Obviously, this coverage provides very little real protection for future asbestos-related liability because of the degree to which the coverage is spread. (See Exhibit C)

Occurrence coverage with an annual aggregate limit of liability for a single insured contractor has just recently been made available to asbestos removal contractors through a very few select insurance "markets". While this type of insurance provides much greater liability protection for the contractor than a claims made or association annual aggregate occurrence policy, it too has limitations. Although the coverage applies only to one contractor, the policy aggregate limit of liability (ranging from $500,000 to $2 million) must be spread across all jobs the contractor performs

during the policy year. Nevertheless, this form of occurrence insurance is more substantial in terms of future protection for asbestos-related claims.

Assuming the contractor performs 20 jobs during the years 1988 through 1992, there will be $1 million of aggregate coverage for each policy year. (See Exhibit D)

Occurrence coverage with a separate "per job" aggregate limit of liability represents the most comprehensive form of protection currently available to asbestos removal contractors. Aggregate per job policies provide a separate limit of liability (ranging from $250,000 to $1 million, depending on the contract price of the job) for each individual job. As an example, if a contractor performed four (4) different jobs during a given year, there would be four (4) different policies available to respond to future asbestos-related disease claims. (See Exhibit D)

To further explain how each of the aforemetioned policies would apply in the event of an asbestos disease claim and to underscore the superiority of occurrence based coverage, particularly the aggregate per job policy, let us examine the following potential scenario which might be played out twenty to twenty-five years from now.

In 1988, John Q. Public visits a public building where an asbestos abatement and removal project is being performed. ABC Contracting Co. is the asbestos removal contractor doing the work. While visiting the building, Mr. Public is accidentally and unknowingly exposed to airborne asbestos as a result of ABC's asbestos abatement operations. As a result of said exposure, an

insidious disease process begins within Mr. Public which ultimately culminates, in the year 2008, in asbestos related cancer. Mr. Public does not learn about his asbestos-related condition until it becomes manifest and is diagnosed in that year. Mr. Public then makes a claim against ABC Contracting Co. and the building owner for damages due to ABC's negligent performance of asbestos abatement operations at the public building in 1988.

Assume further that ABC Contracting Co. performed 9 other jobs in 1988 and 10 each in the four subsequent years (1989, 1990, 1991, 1992). In 1993, ABC Contracting Co. ceases asbestos abatement work and goes into a different type of business.

To show how the insurance discussed above would apply to this potential claim, let us review how each type of policy would (or would not) respond.

With claims made coverage, ABC would have no coverage for Mr. Public's claim since the claim was actually made after the policies it purchased, from 1988 through 1992, expired.

With association annual aggregate occurrence coverage, ABC would have coverage for this claim. However, it would only have protection to the extent that other contractors in the association, who are also afforded coverage under the policy, had not already tendered claims, made against themselves, which exhausted the policy limits.

With annual aggregate occurrence coverage, ABC would be covered for Mr. Public's claim. In addition, since the policy covers only ABC, there would be a limited number of jobs from which potential claims could arise. Nevertheless, if claims arising from

those other jobs begun during the policy period were made, there would only be coverage to the extent that these claims had not exhausted the limits of liability under the policy.

With "per job" aggregate occurrence coverage, ABC would be covered for the claim. Also, since the policy would be written to provide coverage only for the project at the public building where ABC performed asbestos abatement operations, the only other claims, aside from Mr. Public's, which could be made against the policy would have to stem from that project. In short, there would be more potential coverage for future claims under the "per job" policy.

To summarize, the requirements regarding asbestos removal under AHERA will, in the long run, reduce the potential public health hazards of asbestos, but, in the short run, will intensify the need for real insurance coverage. Long tail insurance is essential if the public at large is to have compensation available in the future for unexpected and unintended asbestos-related illnesses stemming from the abatement activities of contractors operating in that industry. The minimal acceptable form of insurance to provide protection against these potential future claims is occurrence coverage with an annual aggregate limit of liability applicable to a single contractor. As a superior alternative, occurrence coverage with a separate "per job" aggregate limit of liability is another form of insurance which will respond to future asbestos related claims.

As noted above, FEIC writes both an occurrence form policy with an annual aggregate and an occurrence form policy with a per

job aggregate. We believe this represents the best coverage for the contractor and the building owner and certainly for the potential claimant for whom the coverage will be available in the future when the claim is made. This combination gives FEIC the flexibility to cover smaller jobs with the annual aggregate policy and larger jobs with the "per job" aggregate.

Our underwriting standards for both forms of coverage are the same. The contractor must pass two tests before we will qualify him for coverage. First, he must pass the same financial tests he would have to pass to obtain a performance bond. Once past this test, we then inspect previous and current asbestos removal jobs to determine the actual quality of his work, equipment, testing procedures and record keeping. The contractor must also be willing to follow our standards which exceed, in certain respects, current OSHA and EPA standards. Inspections to approve the contractor are supplemented with unannounced inspections at job sites covered by our insurance. Failure to maintain our standards will result in the loss of coverage for any future jobs undertaken by the contractor.

To date, Fidelity has considered 85 contractors for certification; 35 have been certified, 30 have been conditionally certified, and 20 have been rejected. Those that have been conditionally certified generally have not had standards as high as ours and are in the process of upgrading. Only upon complete compliance with FEIC standards will they be fully certified. Those that are rejected generally fail the financial tests or have not

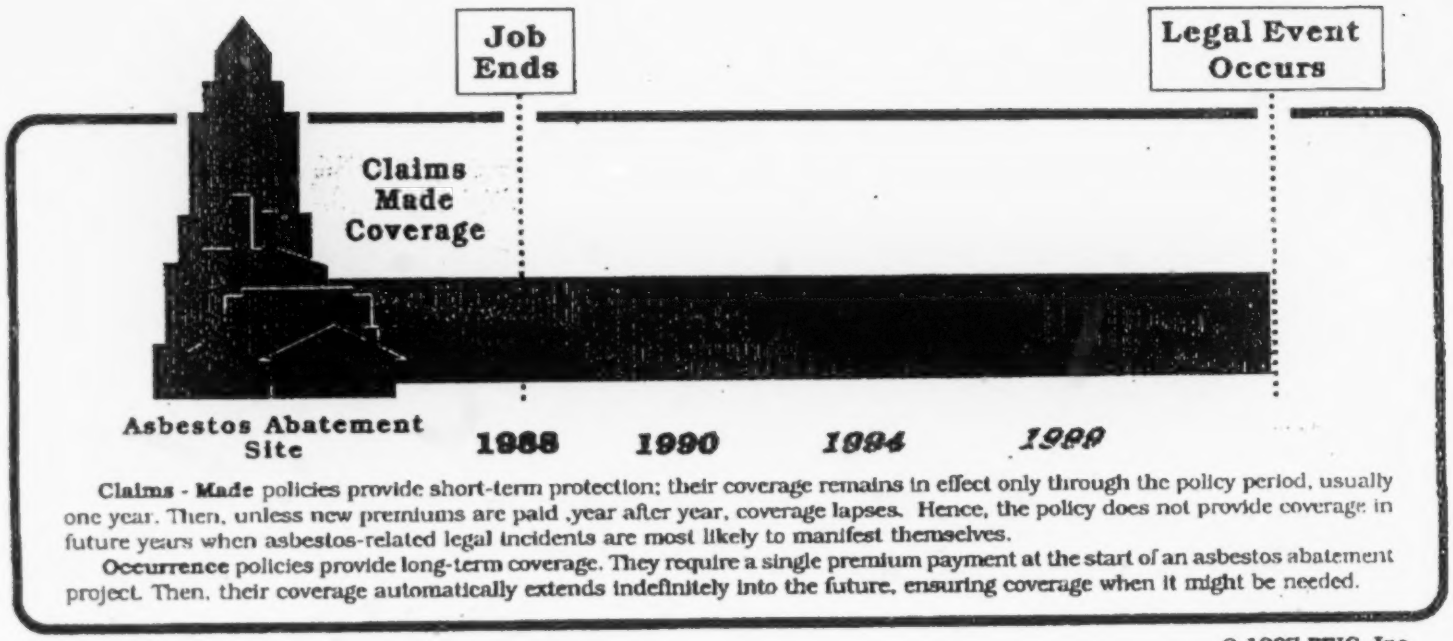
had sufficient work experience in the asbestos abatement field to evaluate their competence to our satisfaction.

In closing, let me say that I have been in touch with representatives of the school community in New Jersey, both public and private, and will be presenting material to them for distribution to the local school boards to educate them concerning these insurance issues.

It seems to me that the AHERA regulations should address the subject of insurance and should require, at the very least, that an occurrence form be required to protect the contractors and the building owners and to assure compensation for those persons who may become afflicted with asbestos related illnesses in the future as a result of the contractor's negligence.

Thank you very much.

84-404 0 - 8



Claims - Made policies provide short-term protection; their coverage remains in effect only through the policy period, usually one year. Then, unless new premiums are paid ,year after year, coverage lapses. Hence, the policy does not provide coverage in future years when asbestos-related legal incidents are most likely to manifest themselves.

Occurrence policies provide long-term coverage. They require a single premium payment at the start of an asbestos abatement project. Then, their coverage automatically extends indefinitely into the future, ensuring coverage when it might be needed.

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EXHIBIT A

EXHIBIT B

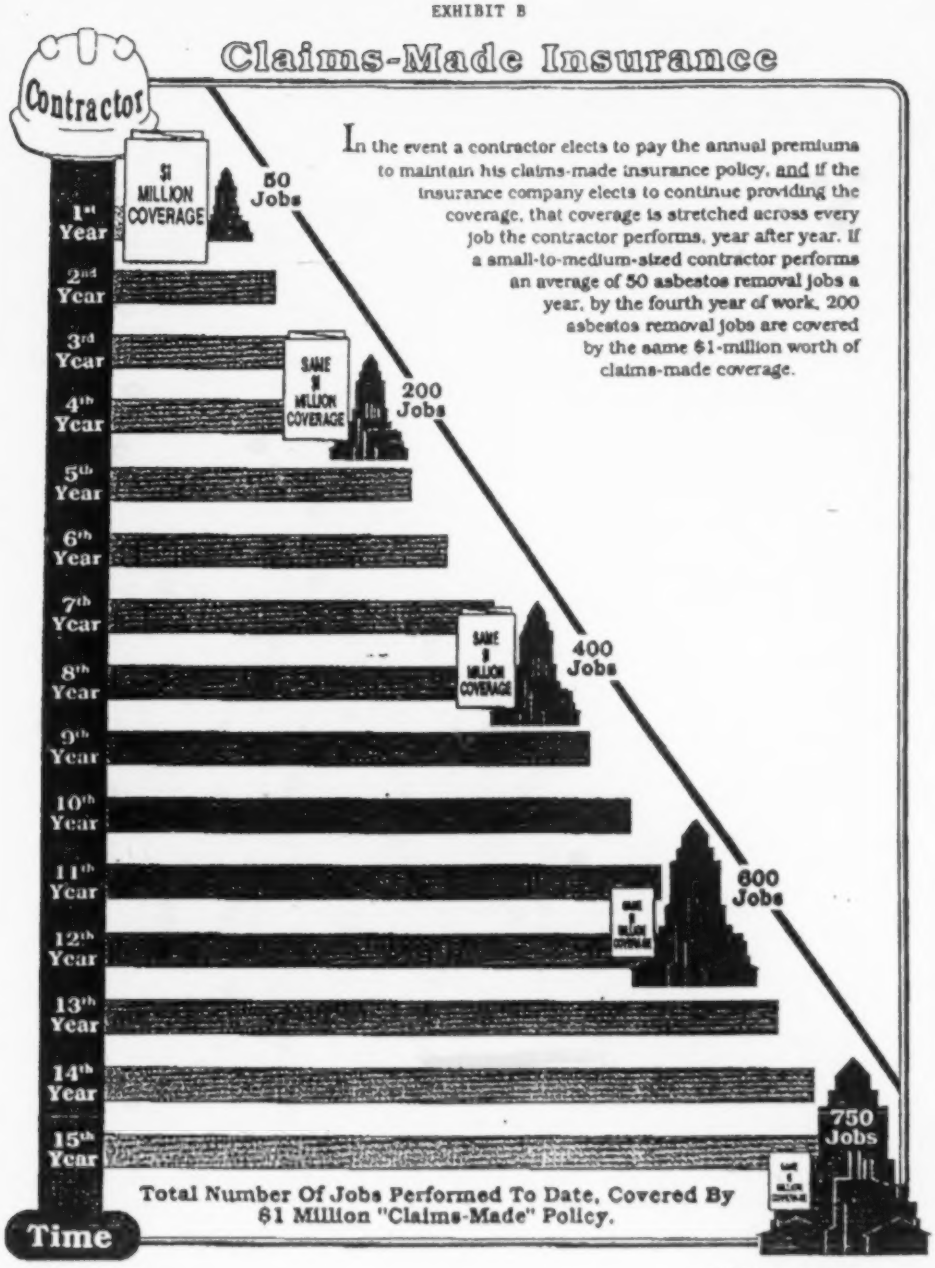
Claims-Made Insurance
Contractor
In the event a contractor elects to pay the annual premiums to maintain his claims-made insurance policy, and if the insurance company elects to continue providing the coverage, that coverage is stretched across every job the contractor performs, year after year. If a small-to-medium-sized contractor performs an average of 50 asbestos removal jobs a year, by the fourth year of work, 200 asbestos removal jobs are covered by the same $1-million worth of claims-made coverage.
$1 MILLION COVERAGE
50 Jobs
1st Year
2nd Year
3rd Year
SAME $1 MILLION COVERAGE
200 Jobs
4th Year
5th Year
6th Year
7th Year
SAME $1 MILLION COVERAGE
400 Jobs
8th Year
9th Year
10th Year
11th Year
SAME $1 MILLION COVERAGE
600 Jobs
12th Year
13th Year
14th Year
15th Year
750 Jobs
Total Number Of Jobs Performed To Date, Covered By $1 Million "Claims-Made" Policy.
Time

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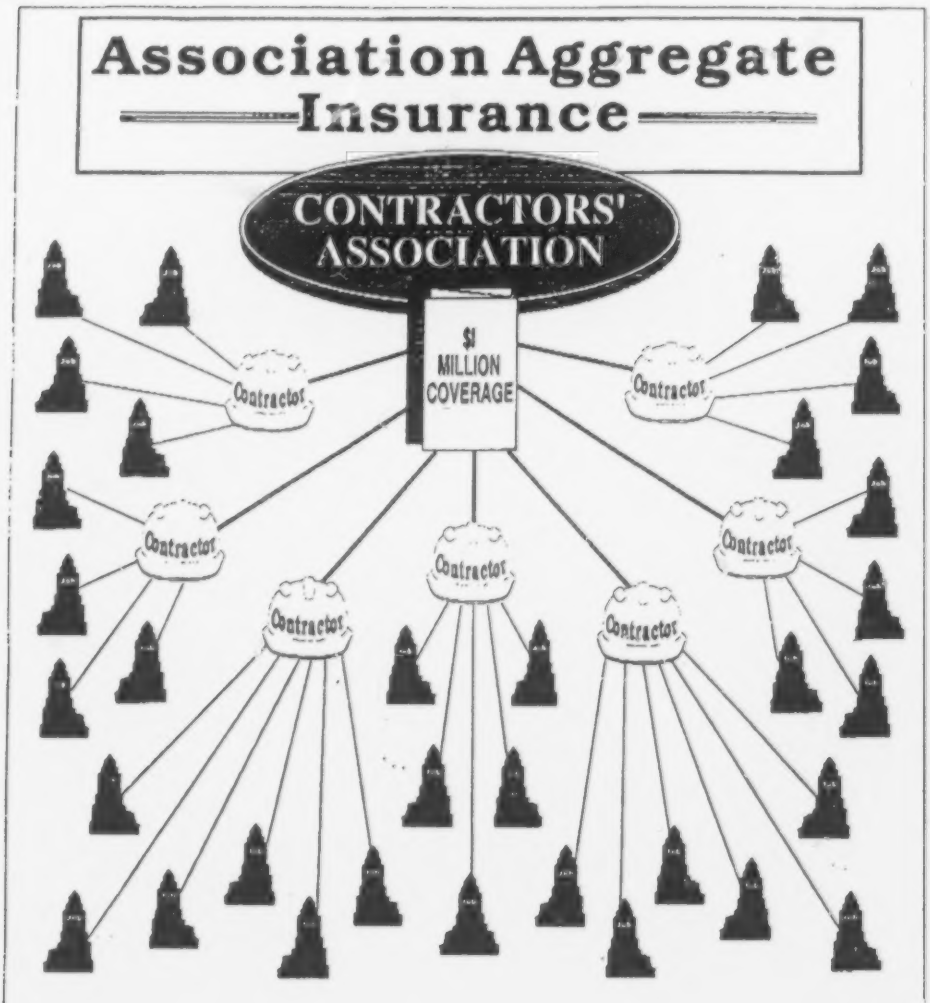
EXHIBIT C



Association Aggregate policies represent the most incredible type of occurrence insurance sold to asbestos abatement clients. This is how it works: acting as an association, a group of contractors purchase a single, $1-million policy. There may be 50 to 100 or more contractors in this group. Each contractor takes the **same, single** $1-million policy and applies it to every asbestos job he performs that year. If each of 100 contractors performs an average of 50 major asbestos jobs annually, 5,000 asbestos abatement projects are covered by only a single $1-million policy. In future decades, all claims arising from those 5,000 projects will be made against only a single pool of $1-million--meaning that, on the average, the actual coverage available for each project will be about $200.

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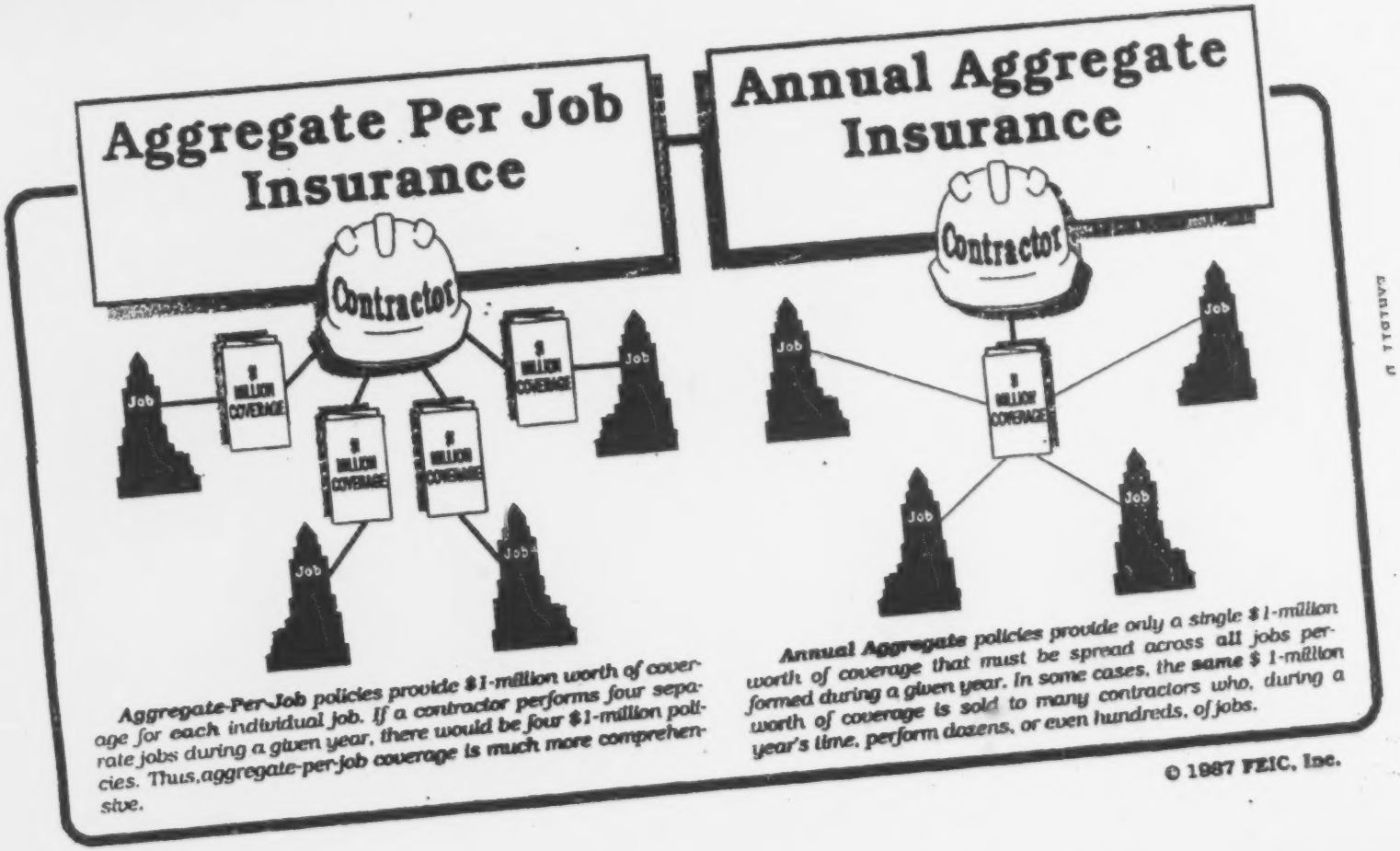

***Aggregate-Per-Job** policies provide $1-million worth of coverage for each individual job. If a contractor performs four separate jobs during a given year, there would be four $1-million policies. Thus, aggregate-per-job coverage is much more comprehensive.*

***Annual Aggregate** policies provide only a single $1-million worth of coverage that must be spread across all jobs performed during a given year. In some cases, the **same** $1-million worth of coverage is sold to many contractors who, during a year's time, perform dozens, or even hundreds, of jobs.*

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The American Society of Mechanical Engineers

Suite 218
1825 K Street, N.W.
Washington, DC 20006-1202
202-785-3756

March 21, 1988

The Honorable Max Baucus
Subcommittee on Hazardous Wastes
and Toxic Substances
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The Environmental Affairs Committee of the American Society of Mechanical Engineers (ASME) wishes to comment on proposed legislation, S. 2024 and H.R. 3893, that would extend the deadline for completing school asbestos inspection and submitting and implementing management plans as required by Asbestos Hazard and Emergency Response Act.

As we suggested to the EPA in our comments in June 1987 on the proposed rule for asbestos-containing materials in schools, the initial inspection of schools could be performed over a three year period. Each local education agency would be required to submit management plans for one-third of its schools each year. Since the requirement for reinspection is every three years, this would provide an even work load for the accredited inspectors and management planners and an even expense for the schools.

We request this letter be made part of the record of the joint hearing held by the Hazardous Wastes and ~~Toxic Substances~~ Subcommittee and the Superfund and Environmental Oversight Subcommittee on March 15, 1988 on the problem of asbestos in schools and commercial buildings. This letter represents the views of the Environmental Affairs Committee, a group of experts in the field, rather than an official position of ASME. ASME is a nonprofit technical and educational organization with 118,000 members, including 22,000 students.

We hope this recommendation is useful to the Subcommittees. If you have any questions, please contact Brenda Sanders in the ASME Washington Office at 785-3756.

Sincerely,

D. B. Tennant

Donald B. Tennant
Chairman
Environmental Affairs Committee

WRITTEN TESTIMONY

on behalf of

THE ASSOCIATION OF SCHOOL BUSINESS OFFICIALS INTERNATIONAL

on

AHERA OVERSIGHT

before the

SUBCOMMITTEE ON HAZARDOUS WASTES AND TOXIC SUBSTANCES
and the
SUBCOMMITTEE ON SUPERFUND & ENVIRONMENTAL OVERSIGHT
of the
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

United States Senate
458 Dirksen Office Building

Original Hearing March 15, 1988

Submitted by

Dr. Jack D. Oatley
Immediate Past President
Association of School Business Officials International
11401 North Shore Drive
Reston, Virginia 22090-4232
(703) 478-0405
and
Associate Superintendent for Administrative Services
Kent Intermediate School District
Grand Rapids, Michigan

As an official spokesman for the Association of School Business Officials on the issue of asbestos regulations, I would like to seek your support to enact legislation to extend the October 12, 1988 compliance deadlines contained in the **Asbestos Hazard Emergency Response Act of 1986 (AHERA)**. Our purpose is to protect the health of our school children and employees by allowing adequate time to implement **AHERA** safely and effectively.

Public and private elementary and secondary schools across the nation continue to use every resource available to them to comply with the deadlines contained in current law. Nevertheless, these schools have found that, based on objective circumstances beyond their control they are incapable of meeting the October 12, 1988 deadline. This is so for four reasons.

First, a significant number of schools are physically incapable of meeting the October 12, 1988 deadline contained in current law due to an unavailability of certified inspectors and accredited management planners in the private sector. Alternatively, schools that wish to self-manage these activities have found that the EPA certified courses currently available to school personnel cannot accommodate all course applicants by the October 12, 1988 deadline.

Secondly, in many parts of the country, an insufficient number of accredited laboratories are available to perform the sample testing required by the Act and the regulations by the October 12, 1988 deadline.

Third, a number of states enacted laws governing asbestos inspection, management, removal, and containment prior to passage of **AHERA**. In some instances, those state statutes conflict with the new Federal law, making it impossible for schools to at once comply with both state and Federal law absent passage of clarifying language by the state legislature.

Finally, the budget cycle of the majority of both public and private schools is based on a fiscal, rather than calendar year. The EPA did not make the **AHERA** regulations available until October 30, 1987. Therefore, many schools may, as a matter of state law, be unable to expend funds for inspection and management until after July 1, 1988.

We believe that extension of the October 12, 1988, deadline can only serve to enhance the integrity of AHERA by providing schools across the country with a reasonable opportunity to fully comply with each phase of the new Federal law. Therefore, we urge you to actively support passage of legislation to extend the October 12, 1988 AHERA deadlines.

Enclosed with this brief statement is raw data compiled from a survey of our affiliate leaders throughout the United States. Their responses show the wide-ranging state of preparedness in the districts throughout the nation. Please contact the association headquarters if you need additional information or have any questions about the responses.

Thank you.

ASBO INTERNATIONAL QUESTIONNAIRE SUMMARY
Concerning AHERA

Total number returning questionnaire: 101

States/Prov. represented: AK, AL, AZ (3), CA, CO, CT, FL, IA (10), IL (7), IN (3), KS (2), LA (2), MD (2), MI (4), MN (2), MO (5), NC, ND, NE (6), NJ (3), NY (4), OH (10), OK (2), OR (2), PA (2), RI, SASK, SC, SD (2), TX (3), UT, WA (6), WI (7), WV

1) What department in your state is handling the AHERA requirements?

Education - (22) AK, NY, CT, FL, IA (9), NY (2), OR, MN (2), SASK, SC, OH (2)
Environmental Quality - (8) AZ (3), IA, IN, LA (2), MD
Executive - (1) OR
Facilities and Planning - (1) NY
Governor's Office - (3) PA, UT, OH
Labor - (3) OK (2), PA
Natural Resources - (2) SD (2)
Office of Air Management - (1) IN
Office of Local Assistance - (1) CA
Public Health - (45) CO, IL (7), IN, KS, MI (4), MO (4), NC, ND, NE (6), NJ (3), OH (7), OK, RI, TX (3), WI (4)
Purchasing Agent - (2) MO
School Facilities Planning - (1) WV
Social Services - (2) WI (2)
Supt. of Public Instruction - (6) WA (6)
University - (1) AL

2) Does your state have an inspection and management plan to implement and what are the timelines?

Completed all projects 2-3 years ago - SASK
Yes, October, 1988 - (58) AZ, CT, FL, IA (8), IL (5), KS, MD ,MI, MN, MO (4), NC, ND, NJ (2), NY (4), NE (3), OH (7), OK, PA (2), RI, SC, SD, TX (2), UT, WA, WI (6),
No - (30) AK, AZ, CA, IA, IL (2), IN (2),LA (2), MI, MN, NE (2), NJ (2), OH (3), OK, OR (2), SD, TX, WA (5), WV

3) What is the availability of certified personnel to do the inspections?

Good - (14) CO, FL, IL, KS, MO, MN, NJ, OH, RI, SD, TX, WI (3)
Limited - (64) AK, AL, AZ (3), CA, CT, IA (9), IL (5), IN (3), KS, LA, MI (2), MN, MO, NE (6), OH (5), NC, ND, NJ (2), NY (4), OK, OR, PA (2), SD, SC, TX, WA (4), WI (3), WV
None - MO, OR, WA
Certification of staff person - OH, TX, UT
Many companies; questionable ability - OH
Available through contract for consulting services- MD, OH
2 with DESE (MO)
Completed bid process, ten bidders - MD

4) What is the availability of certified personnel to write the management plan?

Good - (13) CO, FL, KS, MI, MO, NJ, OH, RI, SD, TX, WI (3)
Limited - (64) AK, AL, AZ (3), CA, CT, IA (9), IL (5), IN (3), KS, LA, MD, MN, MO (2), NC, ND, NE (6), NJ, NY (3), OH (8), OK, OR, PA, RI, SD, TX, WA (4), WI (2), MI (3),
None - (9) IL (2), LA, NY, OK, OR, PA, WI, WV
18 in our state thus far (SC)
Don't know (UT)

5) What is your best estimate of the cost of the following: (Give total dollars and cost per square foot)

a. Inspection:
1¢-3¢ - NE
2¢/sq.ft. - OH
2.8¢/sq.ft. - OH
2¢-5.5¢/sq.ft. - WI
4¢/sq.ft or $20,000 - KS
5¢/sq.ft. - IL
$35,000 or 3.3¢/sq.ft. - WI
$72,000 or 4¢/sq.ft. or - WA
$42,000 or 465¢/sq.ft. - MD
5¢+ /sq.ft. - LA
$15,000 or 6¢/sq.ft. - IL
$12,600 or 6¢/sq.ft. - OK
$12,000 or 6 2/3¢/sq.ft. - RI
$1250 or 8¢/sq.ft. - SD
$20,000 or1¢/sq.ft. - TX
$23,000 or 29¢/sq.ft. - KS
$25,000 or 0.18¢/sq.ft. - WI
$30,000 or 5¢/sq.ft. - CA
$58,500 or 3.9¢/sq.ft. - OR
$77,736 or 10¢/sq.ft. - IL
$142,500 or 15¢/sq.ft. - IL
$360,000 or 10¢/sq.ft or - CT
461,453 sq.ft., 10¢-13¢/sq.ft. - IA
$40,000 or 11¢/sq.ft. - NY
$55,000, inspec. & test mgmt. 2.5 m sq.ft. - IA

2¢/sq.ft. includes tests & writing mgmt. - NE
Insp. & Mgmt. $257,000 or 5¢/sq.ft. - OH
$2000 - IA
$4,200 - OK
$10,000 - NC
$11,160 - WI
$12,000 - IA
$15,00-$20,000 - TX
$20,000 - IL
$23,460 - UT
$2500 - MI, NE
$28,000 - WI
$30,000 - MN

$33,650 - IN
$40,000 - ND
$42,000 - NE
$51,000 - PA
$120,000 - IN
$425/day or 1.5 days/bldg. - NJ
Cost was nil as we had no asbestos (SASK)

b. Tests:
$14/sample - WI
$15-$18/test - WI
$15 each - OK
$15-$20/sample - IL
$18/sample + 5% for handling - SD)
$20/test or $6,000 - NC
$20/sample - IL
$25/Test with minimum of 100 tests - IL
$25/test or $5,000 - KS
$25-$35/bulk samples, $400-$600/air sample - NE
$25 to $35/test - IL
$30/sample - KS
$35/sample - IA
$40/ sample - RI
$40/test - OH
$50/sample or $25,000 - CT
$50 to $250 - NE
$400/test - NY
1¢/sq.ft. - OH
$4,500 - $8,800 or 4¢-8¢/sq.ft - IA
$10,000 - OR
$15,000 or 1.4¢/sq.ft. - WI
$15,000 or .01¢/sq.ft. - WI
$15,500 for 13 buildings 650,000 sq.ft. - OH
$35,000 or 3.7¢/sq.ft. - IL
$40,000-$60,000 - IN
$60,000 or 2.75¢/sq.ft. - TX
$1700/building; .017/sq.ft. - MN
$54,000 or 3¢/sq.ft. - WA
$16,815 - IN
$2000 - IA
$4000 - IA
$5000 - CA, MN
$6000 - PA
$10,000 - ND
$15,000 - WI
$30,000 - MI
up to $60,000 - TX
$41,000 prior sampling + $22,000 additional sampling =
$63,000 or 1-1/4¢/sq.ft. - OH

c. Writing Management Plan:
$1000+ - NE
.8¢/sq.ft. - OH
4¢/sq.ft. - IL
$2000-$5000 - WI

$4,500 - OR
$2000-$4000 - IA
$6,000 or 3 1/3¢/sq.ft. - RI
$6300 or 3¢/sq.ft. - OK
$8500 or .8¢/sq.ft & $5000 or .5¢/sq.ft. training - WI
$10,000 - NC
$15,000 or $.06/sq.ft. - IL
$16,000 or $.04/sq.ft. - IL
$46,094 or $1,500/bldg. + 4¢/sq.ft. - IL
$50,000 or 5.4¢/sq.ft. - IL
$59,500 or 7¢/sq.ft. X 850,000 sq.ft. - OR
$60,000 or 2.75¢/sq.ft. - TX
$100,000 or $3000/School - CT
About $225,000 or $0.15/sq.ft. - AK
$2000 - IA
$3000 - WI
$3,125 - IA
$3000 - $5000 - TX
$16,727 - WI
$20,000 - NY
$28,025 - IN
$60,000 - NY
1¢-4¢ - NE
1¢/sq.ft. - OH
$744 - SD
$5648, 9¢/sq.ft. & $8472, 6¢/sq.ft for training - MD
insp., tests, mgmt. 2.9¢/sq.ft, $30/sample - MI

TOTAL FOR ALL THREE:
$4000 - IA
$5000 - MN
$6000 for 200,000 sq.ft. - WI
4.5¢ - NE
$7,693.48 or 5¢/sq.ft. - MO
$8,000 or 10¢/sq.ft. - IA
25¢/sq.ft. - NY
$10,000 - ND
$12,000 or 6¢/sq.ft. - WA
$12,750 for 17 bldgs. - RI
$20,000 - OH
$21,113 or 12¢/sq.ft. - SD
$30,000 - WA
$30,000 or 4.9¢ - IA
$22,135 - $59,985 - NJ
$30,000 or 4¢/sq.ft. - TX
$35,000 or 7¢/sq.ft. - PA
$36,810, training an additional $1,500 - OH
$45,000 for 1.3 million sq.ft. - IA
$50,000-$75,000 - WA
$50,000 - FL, IA, MD
$51,000 or 4¢/sq.ft. M)
$52,920 or 9¢/sq.ft. IN
$60,000 - $65,000 - NY
$67,000 - OH
$75,000 or 6¢/sq.ft. - MO
$79,133 for approx. 1,217,437 sq.ft - MO
$90,000 - MO
$120,000 - IN
$166,056. - UT

$250,000 - NE
$400,000 - $1,650,000 for 10,000,000 sq.ft. - OH
$575,000 or 10¢/sq.ft. - LA
6¢-12.6¢/sq.ft. - AZ
$5,500/school - AZ
.048¢/sq.ft or $149,242. $22.50/test or $33,000 - MI
4.5¢ to 5.0¢/sq.ft. - SC
$14/sq.ft. - IL

6. Can your plan be ready by 10/12/88? If not, what is the earliest possible date is can be ready, and why?

Yes - CO, CA, IA (2), IL (4), KS, MD (2), MI, MN, MO (2), NC, NE, NJ, NY (2), OH (7), OR, PA, TX (2), WA (4), WI (5)
Possibly - AZ (2), FL, IA, IL, IN, MN, MO (3), ND, NE (2), OH, WI
Probably not - CT, IA (4), IN, KS, MI, NE, NJ, NY, OK, OR, TX
No, need extension - AL, AK, AZ, IA (2), IL, LA, MI, NE, NY, OK, PA, SC, UT, WA, WV
Our board decided to wait "until June or July as it will be cheaper then" - RI

7. List any other relevent comments or data which you feel would help us state our case to congress. We need hard facts and figures.

The inspections and management plans are not the only parts of AHERA. Training, records, notices, etc. add to the total cost. Our fiscal budget year runs from Sept. 1 to August 31. If the deadline is extended 12 months, it will allow proper time to budget the expenditure and allow time to do a proper job. (WA)

There appears to be a shortage of trained personnel to assist with the process. We anticipate a substantial fiscal impact on the district's resources. We have tentative plans to spend in excess of $4,000 for training associated with AHERA compliance. (WA)

1) There are no trained personnel available. 2) The state office has indicated they want all management plans submitted with the same format. To date, we do not know what the format is to be. 3) Lack of approved training programs available. 4) Training programs too expensive. 5) Can't absorb all testing, inspection and writing costs in our budget. (WA)

Regulations have been placed on school district's resulting in a financial burden and a possibility of deficit spending. Since the management plan must be a general fund responsibility, this alleviates the possibility of any voter support (capital projects levy or bond issue) and given our excess levy limitation and recent two-year approved general fund levy. The EPA should make available some financial assistance prior to obligating the funds of our community for their "emergency" situation otherwise extend to a reasonable deadline. It will cost our district approx. $135,000+ to remove asbestos. (WA)

Don't know if it will be ready. The problem is training schools for inspectors and management planners. Hard for contractors to get certified due to too few approved programs. It will cost this school district approx. $70,000 just to get to October. There is no state or federal support for this work. Local budgets will be hard pressed to come up with the money. Also, the management plan, over 10 years will cost this district approx. 3-4 million dollars to implement. the districts current income and expense projections cannot support such projects in lieu of the educational program, which is the decision that must be made. (OH)

Time frame too short; this district is able to financially handle the situation, but I can't see how a less affluent district will be able to do it. (PA)

It will cost about $30,000 for the inspection, samples to be taken, employee training and operation, and management plan. As a ball park figure, it will cost the district a minimum of $500,000 for removal. (TX)

More Federal funds should be available. Small school systems with limited funds are going to be hard pressed to acquire monies necessitated for asbestos abatement and related costs. Limited numbers of certified inspectors and management plan writers will certainly make it impossible for some school systems to comply with AHERA. (NC)

It appears that the new regulations are a classic example of "overkill" especially since we have already been working on the asbestos program for nearly 10 years now and have had 2 or 3 inspections by state agencies. We have corrected our friable asbestos areas and now have to start over again at great expense to our citizens. Our school districts are being deluged by more compliance regulations than we can handle at present. Between asbestos, hazardous wastes, underground tanks, safety (new codes) and a host of other new compliance regulations. (WI)

How can the large city districts make this time line? Financial assistance is needed because local taxpayers are not ready to support a sizeable increase in their property tax. Local taxpayer is not truly aware of this major push by the Federal Government. Clean-up can't be accomplished in 12 months. Inadequate professional personnel to perform these jobs in the job market. (NE)

We believe that if all schools acted at once there would not be sufficient personnel to do the inspections and plan writing. a one year delay in implementing this legislation would be beneficial to all schools. (SD)

There are not enough accredited inspectors and/or management plan writers in the state to accomplish the task by 10/88. Most districts new budgets start on 1 July 88. Can't appropriate funds until then. (OR)

Based on the assumption that no level of exposure is safe, it seems that congress, based on the EPA's urging and grossly understated cost for removal/management, has erred in requiring EPA to develop such stringent and expensive requirements. Clearly, more research and documentation is needed in the areas of minimum safe exposure levels, degree of toxcicity, etc. before declaring asbestos to be sucy a tremendous hazard. Surely, schools are faced with much greater hazards requiring drains on financial resources - smoking, drugs, aids, etc. Recinding or at least drastically modifying AHERA seems to be in order. (KS)

There was insufficient time from the final draft of the bill as published in the FEDERAL REGISTER and the due date of 10/12/88. (MO)

Illinois has the mechanisms in place to complete inspections and management plans to meet deadlines. If schools contract now, there will be no problem. (IL)

Cost to remove asbestos in one of our 11 schools before the deadline was given at $160,000. After the deadline was announced it went to $325,000. We're upset because we had EPA approval for compliance in 1982 and now it does not count. We have to do it again. (KS)

The amount of $52,920 is devasting to our 1988 budget, particularly when the regulations were not finalized until months after our 1988 budget was established. (IN)

We don't have much time to work on the plan and develope timelines for abatement, maintenance and etc. (NE)

We will comply (WI)

Several counties in our area have formed consortiums to employ certified personnel. Ours includes over a hundred buildings and over 4 million square feet. Seven companies attended the original meeting and only 2 bids were received. (OH)

This needs to be planned in relation to the budget year of schools. More time allowed for competition among consulting firms. More time allowed for in-house training of staff, personnel, etc. (TX)

Many school districts not taking problem seriously. Paper work is voluminous. Training of inspectors will not meet demand. (NY)

Meeting deadline could be affected by not having funds available (NJ)

Early start will enable us to meet the deadline. (WI)

Consensus of opinion is that there is not enough qualified inspectors, management plan authors, etc. to complete all the schools in the state by the deadline. (AZ)

Timeline is not realistic, serious financial burdens on each school district. (ND)

Have four new programs this year to implement without an increase in personnel: 1) drug-free schools, 2) hazardous communication 3) AIDS education, and 4) asbestos. (OK)

We're at the mercy of a very limited supply of firms to do inspections and management plans. Additional time would provide some competition. (NEO

If the deadline is enforced, this will be a sham. Let us have more time and do it correctly. (IA)

AHERA creates estremely difficult practical and financial problems in Indiana. We are locked in to 1988 budgets. Penalties for non-compliance and no money to accomplish the task. (IN)

Rough estimate to eliminate our schools' friable asbestos, used as insulation, will cost 21 million dollars. (IL)

This requirement for inspection, testing and management plans is the biggest thing to hit our field since double entry accounting. It will take us time and money to train staff. Also, the question of liability coverage is left unanswered at this time. (NY)

Difficulty in funding the program without adversely affecting other budgets; qualityi of inspections and management will suffer due to rush; inadequate proposals are being accepted or bids not being received due to comprehensive needs; training programs too limited (MI)

Ohio's cost is low as $425,000 has already been spent for abatement to remove all the friable asbestos & using same firm to meet further requirements will further reduce cost. A quote of $48,000 to complete project was received. (OH)

We are ahead of most districts in that we already have removed our friable asbestos. However, timelines are unrealistic on a nationwide basis. Problems include getting certified people, training people and meeting all the requirements. The imposed financial responsibility poses threat to financial stability of school districts and reduces quality of education. (OH)

Issues include: unavailable certified personnel in AK, 30 buildings spread over 23,000 sq. miles, anticipated budget reductions due to AK's adverse economical conditions will reduce manpower, EPA-approved training not available in AK sooner than April 1988 - leaves scant 6 months to comply, adding approximately 350,000 sq.ft. to inventory of school buildings this year (1988) with no additions to maintenance staff. (AK)

Too costly & time lines are restrictive. We were fortunate since we planned ahead. Our costs are minimal since we were one of the first to start. (IA)

Our attorney and insurance company advise doing by contract due to liability. Most schools in Oregon are competing for the contractors & driving the price up. More time would help save money by making the contractors more competative. We all are in a great big panic to get it done. (OR)

Greatest concerns: liability, over-reaction to requirements of the law, and amount of record-keeping necessary to stay in compliance. (NE)

Funding is the critical issue. Without state & Federal funding, we can not do this project. (WA)

This type of work (inspection & removal or encapsulation) would have to be done during the summer months, so as not to disturb the students or subject anyone to possible exposure. Therefore, there would not be enough time to do the job by October, 1988. (LA)

The deadline for compliance is too close. The availability of certified inspectors and management planners restricted due to lack of sufficient training and the state does not have enough personnel to monitor and enforce the plan.

Problem is financial - not having the opportunity to plan ahead for this item in the budget. School district is already in financial difficulty - No state and/or Federal financial support seems to be available for our district. (OH)

The vast range of prices proposed for inspection & plan writing indicates a testing of what the market will bear and a lot of school districts will be gouged in the process.

I don't believe our SED is equipped to review 700+ management plans after 10/12/88 in sufficient time for districts to plan & receive approval from SED for projects to bgin in July, 1989. Voter approval is necessary for long term financing.

A delay in deadlines of approximately eighteen months would be reasonable. Preliminary cost estimates is $85,000 - $100,000, which doesn't include the cost of encapsulation or removal. 18 months delay could possibly cut our expenses 50%. (SC)

Lack of certified inspectors and management plan consultants. Lack of funding ($125,000-$150,000) for inspection and Management Plan. (IL)

Immediately upon notification of the deadline, we proceeded to secure a licensed, reliable company to meet the AHERA requirements. We are fortunate to have a permanent improvement levy that provides the dollars necessary to proceed with this requirement. However, we had to re-prioritize our permanent improvement projects. (OH)

Schools are on a limited budget & cost of complying could deny students educational materials if timelines remain stringent. If asbestos is found, the additional cost of removal or encapsulation will be very costly and damaging to a budget. (IA)

Cost of inspection, tests, and writing the management plan are exorbitant. Companies are cropping up everywhere and "jumping on the bandwagon" to make a killing at the taxpayers' expense. Laws passed in haste, without any thought to financial burden and timeliens restraints, cannot be studied and completed thoroughly so that compliance is met by the prescribed deadline. (NJ)

Most inspection services are quoting .04 - .06¢/sq.ft; no testing included; for our district this would be $120,000 - $180,000 (TX)

Ct. had similar regulation, which was complied to by school districts on their due date. Due date was extended for 6 months for similar problems. Ct. should get waiver from AHERA regulation since Epa used CT's plan to develop AHERA regulations. Funding must be developed before enforcing AHERA regulations. (CT)

Changes made regarding ceiling tile delayed our plan. Laws regarding bidding & evaluation of contractors is a possible factor in delaying many districts. (OH)

Extraordinary expenses that occur with the mandates will be very difficult for our district to fund without special assessment to property tax. Delaying the mandates for 18 months would better prepare us for budget concerns. (IA)

Timelines are impossible with number of qualified people available. Heavy cost item to be completed in a short time which will cost other areas in the schools. (IA)

Boardman Ohio School District Asbestos Removal & Abatement Program: Expenditures to date are $393,606.21; Estimated cost for removal of remaining friable asbestos is $1,275,000; Estimated cost of inspection & training due to AHERA is $38,310.90. Total cost is $1,706,917.11. Additional costs? (OH)

Seems very unrealistic that all can be done by October of 1988. This is March 1 - no schools in Nebraska have started yet. Limited people to inspect and write management plans. Only so many to go round. Schools to make one qualify are limited in the area and are booked up in advance. Only hold the schooling periodically. (NE)

Why not grant extensions given the lack of certified personnel? Funding for project available? Number of deaths per 1,000,000 school population during the 80's directly attributable to (1) friable asbestos and (2) non-friable asbestos? (IA)

Cost is number one problem. Asbestos check completed years ago at cost of $1000. Our new buildings which are heated with geothermal energy were found to be virtually free of asbestos. We were then told that the EPA check completed then is not valid and it must be done again, which is a financial burden to every school in South Dakota. Not enough money to implement plan and maintain it as proposed. Our educational system is mainly funded by property taxes and the public has had enough. As our legislature is just presently setting regulations to approve certifications for firms within the state, I do not feel training can be completed and adequate plans be implemented in such a short time. (SD)

It would benefit each LEA to have the deadline extended to allow funding process. Perhaps extend deadline for inspections and management plans at least 12 months (MD)

Funding may be a severe problem. In Wisconsin the Governor is proposing a tax levy and operating cost freeze for 1988-89. All new spending programs, such as AHERA, may result in the reduction of educational programs, larger class sizes, curtailment or deferment of maintenance on ever-aging facilities. The argument that school could have started last summer is not valid. I know of districts who did start, but the work was not done by EPA certified inspectors (they did not exist). The final set of regulations changed the number of samples required, etc. These districts have to re-inspect their facilities when certified people become available. (WI)

Continuing services (since 1985) from our asbestos consultant have allowed 3 critical steps toward our AHERA compliance: 10 previous client status placed us ahead of non-coients in line to receive AHERA compliance proposals. 2) familiarity with our facilities permitted the asbestos consultant to project more accurate cost figures. 3) prior material survey work for asbestos removal activities will permit us to reuse $41,000 worth of sampling without cost duplication. (OH)

An issue for us is the definition of a school building, i.e.classrooms rented in city-owned or private buildings, etc. (IA)

...time frame is absolutely unrealistic....(AL)

Univ. of Fl. has extension service that trains inspectors and management planners approved by AHERA of which many companies are taking advantage. The State Dept. however, has not est. training requirements. Timelines are a real burden. (FL)

...the estimated costs of complying with these regulations are enormous.... (IL)

THE NEED TO ENSURE PROPER ABATEMENT OF ASBESTOS: A CALL FOR IMPROVED FEDERAL REGULATIONS

STATEMENT BY WILLIAM "CHIP" D'ANGELO
PRESIDENT, KASELAAN & D'ANGELO ASSOCIATES, INC.
BEFORE THE HAZARDOUS WASTES AND TOXIC SUBSTANCES
AND THE SUPERFUND AND ENVIRONMENTAL OVERSIGHT SUBCOMMITTEES
OF THE SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE

MARCH 15, 1988

Good morning. My name is William "Chip" D'Angelo. I am President of Kaselaan & D'Angelo Associates, Inc. (K&D). K&D is an independent environmental engineering and consulting firm headquartered in New Jersey, with offices throughout the country. For the last eight years, K&D has inspected for asbestos, assessed its condition and recommended action in schools, government facilities, high rise office buildings, shopping malls and countless other buildings. K&D has also been approved by the Environmental Protection Agency (EPA) to train and accredit inspectors, management planners and contractors under AHERA.

The EPA Buildings Report

The United States is facing a tremendous problem -- how to properly handle asbestos-containing materials in buildings. Unfortunately, K&D believes EPA's recent report on the status of asbestos in commercial buildings does little to clarify the current situation.

First, K&D does not agree with the premise that it is more important to cleanup the schools than commercial buildings. Asbestos hazards in all buildings must be addressed as quickly as possible. While it is true that schoolchildren are more susceptible to the hazards associated with asbestos inhalation, maintenance and construction personnel in commercial buildings often face hazards at levels much higher than those faced by children in classrooms. Children rarely experience peak exposures in their classrooms; maintenance personnel often do. We must protect these workers.

Second, EPA recommends in its report that we should not

hurry into regulations requiring abatement in commercial buildings. This "wait and see" stance makes little sense. Whether or not regulations are promulgated, work is presently underway and is going to continue occurring in these buildings. Market forces are forcing the wholesale removal of asbestos from buildings at a dizzying pace. But can building managers and owners feel confident about the decisions they are being forced to make or with the quality of work that is being done?

Just as important, are building occupants actually safer following the work? Or, are they in greater danger because of shoddy abatement contracting?

Some have suggested that the regulations under the Asbestos Hazard Emergency Response Act (AHERA) be applied to all public and commercial buildings. K&D does not agree with this proposal. Instead, K&D urges federal regulations similar to those promulgated under New York City Local Law 76.

New York City defines what should be done when a building is scheduled to be renovated or demolished. The law also establishes an inspector and contractor certification program. If the asbestos is damaged or has the potential to become damaged, it must be abated during renovation. By requiring inspections and abatement at the time of renovation, the law allows for an orderly approach to handling the asbestos problems rather than the haphazard approach we are currently facing in buildings.

The problem with AHERA is that the technical guidance

currently afforded under the regulations is confusing and inadequate. AHERA regulations presently provide that accredited experts conduct visual inspections and make a subjective decision regarding the degree of damage, placing the material into one of six categories. There are absolutely no scientific or engineering protocols for making the decisions since EPA has provided little technical information. As a result, we are left in an unfortunate situation where it is possible for six different inspectors to rate the asbestos damage in six different categories. This is no way to properly assess the hazards of asbestos.

K&D is concerned that AHERA places the responsibility on the inspector and the regulation includes possible fines if the inspector makes an error in judgment. Consider the results: An individual with little or no background takes a five day course and then has the responsibility for making decisions regarding future abatement plans. It is easy to believe that this inspector, when making a judgment call, will always lean toward removal to avoid underestimating damage and receiving a fine. The result is unnecessary and perhaps dangerous removal work. AHERA was not supposed to be a removal law. Instead, it was supposed to require "abatement" of hazardous and potentially hazardous asbestos. By making this a removal law, we may be endangering the lives of the asbestos workers and children.

Finally, EPA correctly asserts that with all the work required under AHERA, there are simply not enough accredited

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consultants and contractors to perform work in commercial buildings. However, there is a solution to this problem. To free professionals to work in buildings, K&D recommends that asbestos workers who took courses similar but not identical to those being offered under AHERA and can demonstrate years of experience, be given the opportunity to pass an AHERA test. Using this "grandfathering clause" to utilize those currently experienced workers is much more beneficial than producing "five day experts." If these experienced workers pass, they should be provisionally accredited allowing them to work right now. After one to two years, they would lose this provisional status and be required to take and pass an AHERA course in order to remain accredited.

Moreover, the states should be urged by EPA to reach reciprocal agreements so asbestos firms do not have to send their workers to training in all the states in which they do work. The model accreditation plan established by EPA is strong enough and the training requirements from state to state are essentially inconsequential in their differences but it takes a great deal of time if firms are forced to send workers to training in each state, exacerbating the shortage of contractors.

By setting tough licensing standards based on asbestos contractor performance standards, a state can still achieve its objectives without subjecting workers to repetitive classtime. At the same time, more asbestos professionals will be available to do work in buildings.

The Problem

Asbestos fibers can exist in building and insulating materials within a structure. If these fibers are completely bound into a construction material or exhibit no signs of damage or deterioration, the health risks are minimized. Unfortunately, the problem does not disappear. Construction, renovation or even simple building maintenance will probably disturb the material and release the dangerous asbestos dust. Over time, the structural integrity eventually will fail and regulations promulgated under the Clean Air Act mandate the material be removed prior to building demolition.

The AHERA regulations of course are meant for schools but could also serve as a useful guide in other buildings. Unfortunately, as currently written, they do little to provide commercial, industrial and institutional building managers and owners with adequate guidance on asbestos problems prior to demolition. Despite the lack of EPA action, property managers and owners desperately need information because market forces are driving them to remove all asbestos. Buildings that contain asbestos are selling and leasing below presumed market rates. In addition, lenders and insurers are refusing to provide their services to managers and owners of buildings that contain asbestos, even if the material poses no immediate threat to building occupants or workers.

Some state and local governments have taken action and set standards for abatement in public and commercial buildings, most

notably New York City Local Law 76. However, the vast majority of managers and owners are left with no regulatory guidance.

Without this guidance and lacking necessary technical expertise and information to make proper decisions regarding asbestos, managers and owners will end up holding the bag on asbestos liability issues. Experiences suffered earlier in the Eighties by school officials show why. Lacking technical guidance and federal regulations, school officials did not know where to turn after notifying parents and teachers of the results of asbestos inspections that were required by EPA in 1982.

Thus, they often took the cheapest route and hired unqualified and inexperienced "rip and skip" contractors to rid the school of any presumed hazards. The results could not have been worse. EPA estimated that 75 percent of all the abatement work undertaken in schools was improperly completed, making a bad situation worse. (Experts claim the same percentage of shoddy work is occurring in private structures.) It will now take many additional years to cleanup the schools under AHERA.

In addition, the human and abatement costs are staggering. The number of bodily damage suits are skyrocketing. Already, 40,000 bodily damage suits have been filed around the country, many from former school employees and occupants. A recent settlement in Illinois involved an office worker who contracted mesothelioma after working in an asbestos-laden building for several years. The schools and private owners may ultimately be found liable for bodily damage, especially if the "rip and skip"

contractors cannot be found years down the road.

The experiences in the schools serve as a chilling warning for private building managers and owners. Ominous signs of similar problems occurring in commercial buildings are coming to the forefront. While some of the nation's largest corporations are hiring established, reputable asbestos consultants and contractors, smaller, less-secure companies seem to be turning to the same "rip and skippers" who are being forced out of the school abatement market because of AHERA.

Evidence of inadequate removal work is being seen throughout the nation. In California, a large project recently had to be shut down because the contractor was doing such poor work. In Camden, N.J., asbestos was discovered dumped in the basement of a vacant house. Worse, children were playing in the asbestos debris. In Colorado, an entire shopping mall was closed due to the mishandling of asbestos by the renovation contractor.

Finally, in a much-publicized case, 25 contractors and the EPA asbestos inspector in New York City were indicted earlier this year for giving and taking bribes. It can be assumed that much of the work done by these contractors was woefully inadequate. As a result, countless workers and building occupants are likely being exposed to increased, rather than reduced, asbestos dangers. Moreover, the managers and owners of these buildings may be held liable for the unsafe work that was done.

Ironically, building owners who think they are ridding

themselves of asbestos liabilities may actually be creating a bigger problem for themselves by relying on contractors who do poor work. Contractors are in a unique position; they are poised to reap the benefits of an industry that is expected to gross in excess of $100 billion in revenues by the end of the 1990's. There is certainly a tremendous lure to enter this growth industry, especially with building managers and owners searching frantically for solutions. Preying on these fears and acting in an environment of little regulatory enforcement, many contractors may be more willing to cut corners, increasing the likelihood that hazards may occur.

But, with the market growing so quickly, many companies will be entering the field interested only in making a fast buck. Sadly, their work will probably be substandard, particularly so since only asbestos workers in schools need be accredited--causing managers and owners more headaches than are solved.

Given these problems, and lacking the proper regulatory guidance, what can managers and owners do to ensure they are protecting building occupants and themselves from asbestos hazards and future liabilities?

<u>Understanding the Differences Between Consultants and Contractors</u>

They must understand the difference between the independent professional asbestos consultant and the abatement contractor. Asbestos abatement is construction work. It is standard practice in the construction industry to first hire a design professional if an owner is planning to erect new facilities or remodel

existing structures. Rarely will a thoughtful owner go directly to a contractor for any difficult or sophisticated construction task. The asbestos situation is the most sophisticated and sensitive of construction projects and the owner must be guided by a competent professional.

The independent consultant does not perform any abatement work. Instead, he is hired to inspect buildings for asbestos and make an evaluation of any immediate or potential hazards. After completing the evaluation, the consultant will design and budget corrective action plans for the contractor to implement. The consultant will monitor the contractor's work to ensure it is thorough and safe and then certify the work once it has been completed.

The abatement contractor should never be hired to perform an inspection and design abatement plans, especially if he is the one who is going to be doing the abatement work. The contractor may design an action plan that is in his interest, rather than in the building owners'. To avoid this conflict, a consultant who has no financial interest in the amount of abatement work that will be done and no connection with any abatement contractor should be retained. In this way, building owners can be assured that the inspector is concerned about health and liability hazards, not his financial stake in the abatement work.

At a minimum, the consultant should be an accredited inspector and management planner under AHERA. Although the AHERA accreditation applies only to those who work in schools, the

accreditation is a benchmark to determine the consultant's minimum qualifications.

More than AHERA accreditation, the consultant's field personnel should be directed by Professional Engineers, Licensed Architects and Certified Industrial Hygienists. The consultant's laboratory should be accredited through the National Bureau of Standards. The firm should also have electron microscopy capabilities so that air quality is properly monitored during and after the abatement work. Moreover, the consultant should be certified either by EPA or a state department of health to train asbestos inspection and abatement workers.

The professional, qualified consultant will work with the building manager and owner to ensure quality abatement work. The keys to a successful abatement project are two-fold: (1) superior project specifications and (2) strict supervision (including pressure and air monitoring) of the project.

During the abatement activity, the consultant will supervise all aspects of the project from area preparation to disposal of asbestos debris to ensure the work has been done properly and that the landfill of final deposition is operating under EPA regulations. Upon completion of the project, building owners should receive a full written report by the consultant to serve as a permanent record of corrective action, as well as a certificate of occupancy and record of the air monitoring and waste disposal. Only then can building owners feel confident that their property is safe from asbestos hazards and that their

liability is greatly limited.

Building owners are facing tremendous asbestos problems. Regulatory guidance from the federal government, and even many state governments, is limited, or non-existent. Independent professional asbestos consultants are stepping into this void and are helping managers and owners handle their asbestos headaches. This is not an ideal situation but in the absence of regulations it is perhaps the best way to ensure the proper handling of asbestos.

The costs of dealing with asbestos can be expensive. But if the problem is approached in a slipshod manner, the costs will be much greater. Lacking regulatory guidance, building managers and owners have been searching desperately for solutions to asbestos problems. By carefully hiring a professional consultant, owners can feel confident that their asbestos problems will be handled quickly, professionally and properly the first time.

There are no bargains in eliminating asbestos hazards. But by retaining an asbestos consultant, managers and owners are taking the right approach to asbestos hazards, and liabilities, in their buildings.

1125 Fifteenth Street, N.W.
Washington, D.C. 20005

Mortgage Bankers Association of America

Burton C. Wood
Senior Staff Vice President and Legislative Counsel
202-861-6507

April 1, 1988

The Honorable Max S. Baucus
Chairman
Subcommittee on Hazardous Wastes and Toxic Substances
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman,

The Mortgage Bankers Association of America (MBA) respectfully requests that the enclosed statement be included in the record of the Joint Hearing of the Subcommittee on Hazardous Wastes and Toxic Substances and the Subcommittee on Superfund Environmental Oversight that was held on March 15, 1988.

That hearing considered the implementation of the Asbestos Hazard Emergency Abatement Act and the problem of asbestos in commercial buildings. It is the latter aspect of the hearing with which MBA is concerned. We believe that the attached statement contains useful information on this issue which may be helpful to the Subcommittees in determining the future direction of their efforts in this area.

Please accept our appreciation for your consideration of this request.

Sincerely,

Burton C. Wood

Enc.

1125 Fifteenth Street, N.W.
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202-861-6500

Mortgage Bankers Association of America

Statement of the

MORTGAGE BANKERS ASSOCIATION OF AMERICA

For the Hearing Record
Of the Joint Hearing of the

SUBCOMMITTEE ON HAZARDOUS WASTES AND TOXIC SUBSTANCES

and the

SUBCOMMITTEE ON SUPERFUND ENVIRONMENTAL OVERSIGHT

To Investigate
Implementation of the Asbestos Hazard Emergency Abatement Act
And to Consider the Problem of Asbestos in Commercial Buildings

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

UNITED STATES SENATE

March 15, 1988

The Mortgage Bankers Association of America (MBA)* is filing this statement to present the Subcommittees with some background information on the activity that is currently taking place in the real estate industry in response to the potential health threat of asbestos containing materials (ACMs) in existing structures. It also presents a preliminary response to some of the issues raised in the Environmental Protection Agency (EPA) Study of Asbestos-Containing Materials in Public Buildings, February 1988 (hereinafter referred to as "the study"). MBA is presently in the process of analyzing the study and assessing its conclusions with respect to our members' lending experiences, and hopes that the Subcommittees will provide us with an opportunity to present these findings.

MBA is sensitive to and concurs with the Subcommittees' objective in requesting the EPA study and the objectives of those members sponsoring the public and commercial buildings legislation (S 981 and S 1809, "The Toxic Substances Control Act Amendments Acts of 1987"), namely protection of human health from the hazards associated with asbestos. Others are attempting to explore this issue through technical and scientific research. However, MBA does not presently have the expertise to address the scientific issues related to determining the acceptable estimate of risk due to asbestos exposure in public and commercial buildings. MBA shares the Subcommittees' concerns regarding the

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*The Mortgage Bankers Association of America is a nationwide organization devoted exclusively to the field of housing and other real estate finance. MBA's membership comprises mortgage originators and servicers, as well as investors, and a wide variety of mortgage industry-related firms. Mortgage banking firms, which make up the largest portion of the total membership, engage directly in originating, selling, and servicing real estate investment portfolios. Members of MBA include:

- o Mortgage Banking Companies
- o Commercial Banks
- o Mutual Savings Banks
- o Savings and Loan Associations
- o Mortgage Insurance Companies
- o Life Insurance Companies
- o Mortgage Brokers
- o Title Companies
- o State Housing Agencies
- o Investment Bankers
- o Real Estate Investment Trusts

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protection of human health from the potential hazards of asbestos. MBA is also interested in facilitating the Subcommittees' understanding of the profound, continuing economic impact on the real estate industry of the presence of asbestos in commercial and residential properties and the various legislative proposals offered in response to this problem.

This statement, therefore, focuses on present activity in the real estate industry regarding abatement of ACMs and, to a limited extent, on the information in the EPA study.

CURRENT ACTIVITY IN THE REAL ESTATE INDUSTRY

EPA Study

The EPA study indicates that the agency has been advised by building owners and managers in the commercial sector that since 1983 the number of buildings inspected, placed under management plans, and scheduled for asbestos abatement has increased significantly, and that these activities have decreased the amount of asbestos remaining in public and commercial buildings. It further states that states and localities are increasingly taking the initiative in establishing asbestos control programs to the extent that is appropriate for their jurisdictions (Study, p. 18). However, the study also indicates that the increased activity does not guarantee risk reduction in every case (Study, p. 18).

Our experience can supplement the EPA study. As discussed below, there is substantial private sector response to the presence of asbestos in commercial and public buildings. Both lending policies and owner's abatement activities attempt to address the public

health and commercial concerns. Our members also indicate that they are subject to many new state and local laws and regulations regarding asbestos abatement, as well as market pressures. As a result, they share the EPA's concerns that not all of the asbestos abatement actions have taken the correct approach to the problem from either a public health or transactional perspective. Nor have all such actions been conducted in a manner consistent with EPA guidance documents.

EPA also states that it does not have the data to produce a scientifically acceptable estimate of risk due to asbestos exposure in public and commercial buildings, nor to quantify the risk reduction now underway in public and commercial buildings as a result of private, state, and local government actions. Further, EPA was unable to estimate how risk reduction activity might increase in coming years in the absence of further Federal regulation (Study, p. 19).

The EPA study identifies many areas where additional studies could be performed to address informational deficiencies. It states that "basic information on exposures to airborne asbestos in buildings is not fully available on key considerations . . ." (Study, p. 21).

The EPA study also cites a 1987 study of airborne asbestos in 43 Federal buildings, which found extremely low levels of airborne asbestos (0.00073 fibers per cubic centimeter) even in buildings with significantly damaged ACMs and found no difference in asbestos levels between inside and outside air (Study, p. 12).

These factors have led some of MBA's members to express concerns that an objective study showing the health risks associated with various levels of airborne asbestos and conditions of asbestos in public and commercial buildings might alleviate the current fear

motivating unnecessary or potentially harmful abatement actions. Such a study could also provide valuable guidance to those considering abatement and operations and maintenance programs.

The most immediate impact of the study from the lender's perspective is the regulatory recommendation. In its February 26 recommendations to the President of the Senate and the Speaker of the House, EPA suggested that a comprehensive regulatory inspection and abatement program, such as was recently implemented for the Nation's schools under the Asbestos Hazard Emergency Response Act (AHERA) schools rule, is inappropriate at this time.

While MBA also cannot presently assess that recommendation, we encourage the Subcommittees to hold further hearings before requiring a regulatory program for public and commercial buildings. We believe we can presently serve the Subcommittees best by supplementing their substantive information on real estate market activity relating to asbestos, and we attempt to do so below.

LENDER EXPERIENCE AND CONCERNS

Reports from MBA members who make real estate loans on single-family dwellings and residential apartment buildings, as well as on commercial and office developments, amply demonstrate that lenders are concerned about asbestos.

Asbestos problems are being responded to at the time new loans are originated, and on properties backed by loans and equity investments in existing portfolios. As outlined below, while the response actions taken vary because of these differences, the problems

they attempt to address are the same. Lenders and/or owners must make their properties free of health hazards, attractive to tenants, and in compliance with Federal, state, and local laws. Current lender responses are outlined below in order to present some of the practical problems encountered in developing appropriate responses.

Loans Held in Existing Portfolios

From a lender's perspective, the presence of asbestos requires balancing competing concerns. First, many lenders for their own purposes (to determine whether health-threatening situations exist, and concurrently to identify and address potential tort liabilities) determine whether asbestos is present in a building. If asbestos is found, owners and lenders face two major alternatives—full removal or acceptable abatement—and a third de facto alternative, no action. Lenders and owners face potential residential and commercial tenant dissatisfaction, no matter which of these alternatives they pursue.

For existing loans in a portfolio, lenders and owners are presently uncertain whether removal or abatement is appropriate, despite the existence of EPA's Guidance for Containing Asbestos-Containing Materials in Buildings (the Purple Book), June 1985. Even where asbestos is not friable and is subject to a reasonable operations and maintenance program, tenants may vacate at the end of their lease terms, or owners might abandon buildings or residences without regard to any level of actual risk. Conversations with lenders indicate that both these responses have actually occurred.

As a result of the uncertainty of market reaction, many lenders and owners have completely removed asbestos, although containment action might have been more appropriate under EPA guidelines. In addition, some building owners are removing

asbestos from tenant spaces as tenants move—even where such action is not required by the lender or by state or local law or regulation.

Substantial abatement activity is also being undertaken despite some of the practical difficulties these actions entail. Abatement poses particular difficulties in multifamily residential property because vacancies often do not occur floor by floor and containment is next to impossible. Unlike school buildings, commercial and residential properties are usually not vacant for a period of the year, so consideration must be given to tenant relocation during abatement. Our members' experience with other environmental hazard abatement actions, e.g., lead-based paint, indicates that substantial rehabilitation often requires tenants to relocate. This would seem to be an even larger concern with asbestos removal, because it may be harmful for tenants to remain during the removal process. Relocation is a particularly difficult problem in residential properties because many tenants will be unable to find alternative affordable housing and many may be unable to afford the rents in substantially rehabilitated units. Consequently, asbestos removal actions may conflict with tenants' housing needs.

In addition, once it is determined that an abatement or removal action will be undertaken, owners have been faced with the need to finance this action. At present, funds for this endeavor must be generated out of a project's operating funds, or financed. In extreme instances, borrowers have not had sufficient cash flow from the project to continue to make mortgage payments in addition to financing substantial inspection, abatement, and operations and maintenance programs, and have defaulted on loans. In such instances, owners abandon the property, leaving the tenant seeking assistance from a bankrupt owner.

As a result of projected removal and abatement costs, some owners find themselves unable to take any abatement or removal action. These owners are consequently incurring substantial potential liabilities. While, to date, plaintiffs who believe they have incurred asbestos-related diseases as a result of exposure in commercial and/or residential facilities have sued the manufacturer of the asbestos product, lenders and owners are concerned about potential tort liability. Potential tort liability serves as a substantial incentive to comply with EPA guidance and expert recommendations even where such action is not required by state or local law or regulation.

In sum, our members indicate that lenders and owners are proceeding with asbestos abatement and removal actions as a result of market incentives. These actions may or may not be necessary, but tenants, owners, and lenders are all incurring substantial economic and other costs.

New Loans

It is easier for lenders to address asbestos problems in buildings at the time that a new loan is being negotiated than in properties in existing loan portfolios. When considering an initial financing, a lender is able to require inspection for asbestos as a condition to making a loan and to base its lending decision on results of the inspection.

It is an increasingly widespread practice to require inspection for asbestos (and other environmental hazards) and assessment of related problems in the underwriting process for commercial real estate loans. The exact details of the investigation may vary widely in the industry, reflecting variations in both state and local laws, underwriting guidelines of commercial property investors, and the level of risk which individual lenders are willing to assume. While there is a widespread and growing trend to require inspection for

asbestos prior to making loans, a consensus has not yet emerged in the commercial real estate finance industry on precisely how to handle asbestos abatement or operations and maintenance actions when ACMs are found.

Because many residential mortgage lenders originate a loan and sell it on the secondary market in order to obtain capital to make more loans, lenders who sell their loans must accommodate the concerns of the secondary market for residential loans. For instance, the Federal Home Loan Mortgage Corporation (FHLMC) and the Federal National Mortgage Association (FNMA) (federally sponsored enterprises that buy conventional home mortgages from lenders and hold them or place them with investors) are presently making efforts to address hazardous waste and other environmental problems such as asbestos in their underwriting guidelines for multifamily and single-family properties. FHLMC proposed initial drafts of their guidelines last fall. MBA members are presently working with FHLMC on those guidelines, which are tailored to the differences in investment in single-family and multifamily properties.

FNMA has developed Environmental Hazards Management Procedures describing the procedures that lenders must follow to assess and maintain the environmental condition of properties pledged as security in a new Delegated Underwriting and Servicing program for multifamily loans. The FNMA Environmental Hazards Management Procedures indicate that "the presence of either friable asbestos-containing materials or substantial amounts of nonfriable asbestos-containing material that cannot be safely encapsulated and/or removed or will not be routinely inspected and maintained by the borrower can make a property ineligible for the delegated underwriting program." (Source: Part X, Environmental Hazardous Management Procedures, FNMA Delegated Underwriting Standards: Multifamily Program.) (The delegated underwriting program allows a lender to

process and underwrite a loan for sale to FNMA; the prior approval program requires that FNMA review documentation before a loan is accepted for purchase.)

Whatever the final form of environmental guidelines imposed by FHLMC and FNMA, it is clear that they will impose some level of due diligence on the part of the lender as a precaution for making loans to be purchased by FHLMC or FNMA. Because of the great number of single-family and multifamily loans purchased on the secondary market by FHLMC and FNMA, their policies will have a direct impact on the many transactions in which they are used and an indirect impact, as a precedent for the industry, on other transactions.

Still other lenders hold residential loans in portfolio or sell loans to other types of private investors. In those instances, the FNMA and FHLMC guidelines are not applicable, but individual lender guidelines or requirements would be applicable.

In sum, our members indicate that when properties are being financed, lenders are beginning to require that some type of analysis be done to determine the presence and condition of ACMs. There is, however, little uniformity in the type of analysis done or in the handling of abatement or operations and maintenance activities when ACMs are found.

Trained Personnel

Our members' information appears to support some other EPA conclusions regarding market activity as well, namely the lack of competent personnel to perform inspection and abatement activities, and the concomitant difficulty in meeting sometimes impractical laws and regulations.

The present situation in New York City, resulting from the 1985 New York City law and enabling regulations regarding asbestos removal in renovation and demolition projects, may help the Subcommittees to determine the approach and the timing of Federal requirements.

The New York City law provides that renovation or demolition projects which disturb asbestos must be conducted in accordance with procedures established by that law and enabling regulations, and that workers who handle materials containing asbestos receive appropriate training.

Some MBA members have indicated that renovation and conversions are substantially delayed in New York due to the insufficient number of trained personnel to perform the abatement work. They contend that a six- to nine-month construction delay is not unusual due to the unavailability of trained personnel.

In January 1987, the Unites States Attorney for the Eastern District of New York charged 25 people connected with 23 companies with giving bribes to Federal inspectors to overlook violations of Federal asbestos rules and regulations regarding the working conditions under which removal occurs. There has been speculation that these crimes reflected the large demand for, and short supply of, asbestos contractors. The need to comply with the requirements regarding the use of trained personnel and the difficulty of doing so in a reasonable time produced an incentive to break the health laws.

SUMMARY

MBA recognizes and shares the Subcommittees' concerns about the health effects of asbestos in school buildings and in public and commercial buildings. MBA believes that the presence of asbestos in buildings is a serious problem and that the market is becoming increasingly responsive to these concerns.

As an association, MBA supports a national commitment to protecting the environment and the public health from the deleterious effects of pollution and hazardous substance contamination. The effort to clean up existing contamination and to prevent future contamination is an important public goal of society and government at all levels.

To this end, MBA supports industry-wide and public education and information campaigns to provide accurate and timely information regarding environmental hazards and appropriate abatement or hazard reduction techniques, and is presently evaluating the appropriate mechanism for its own organization to meet those goals with regard to the asbestos problem.

MBA understands that the Subcommittees do not intend to impede the efficient working of the real estate finance, housing, and commercial development markets. To that end, MBA urges the Subcommittees to hold further hearings to review EPA's assessment of its need for more studies, consider the level of data on the health risks associated with various levels of airborne asbestos is public and commercial buildings, and assess more accurately the asbestos problem in public and commercial buildings before proceeding to consider legislative proposals.

We hope that in those hearings the Subcommittees will consider processes to encourage coordination of Federal, state, and local governmental bodies and regulatory agencies in order to minimize confusion, duplication, and conflict among applicable laws and regulations.

In addition, we urge the Subcommittees to be sensitive to the several major differences that presently exist between implementation of AHERA and a proposal for public and commercial buildings. One of these differences is financial assistance. Neither Senate bill provides direct assistance, tax incentives, insurance, or guaranty authority to assist in financing the cost of meeting imposed inspection and/or abatement requirements, or any other incentives to attract private funds to solve this problem.

Further, while school buildings are vacant during many periods of the year, commercial and residential facilities are, ideally, fully and continually occupied. Consequently, abatement is usually undertaken when vacancies occur and when renovation and remodeling or undertaken. We hope that the Subcommittees will be sensitive to the practical limitations faced by owners, those who finance properties, and tenants living or working in those properties and that the Subcommittees will establish priorities based on those limitations.

We look forward to having an opportunity to present more detailed reaction to the EPA report and specific legislative proposals to the Subcommittees in the near future.

National Conference of State Legislatures

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President Irving J. Stolberg
Speaker
House of Representatives
Connecticut

Executive Director
William T. Pound

March 15, 1988

The Honorable Max Baucus
Chairman, Hazardous Wastes &
Toxic Substances Subcommittee
United States Senate
Washington, D.C. 20510

Dear Chairman Baucus:

On behalf of the National Conference of State Legislatures, I urge Congress to extend the deadlines for submission and implementation of school asbestos management plans by at least one year.

With enactment of the Asbestos Hazard Emergency Response Act of 1986 (AHERA), Congress sought to protect our nation's children from hazardous exposure to asbestos materials in their schools. The success of this immense campaign will depend on the working partnership of local education agencies, states, and the federal government that Congress built into the AHERA program.

Unfortunately, the timetable set for schools to inspect their buildings, develop asbestos management plans, and begin implementing those plans already precludes most states from fulfilling the oversight and enforcement duties that Congress assigned to them under AHERA. The impending deadlines also promote helter-skelter compliance by local education agencies, rather than the systematic care that Congress obviously intended. This combination of hasty implementation without effective oversight and quality enforcement threatens the very goals of AHERA.

The campaign to eliminate asbestos hazards in the nation's schools has been launched effectively. It would be a tragic error now to swamp the AHERA program by insisting on an unmanageable timetable. For the program to unfold in an orderly way, and for states to ensure that asbestos projects in schools are safely and competently performed, the deadlines for management plans must be postponed at least one year.

The AHERA timetable for adoption of state accreditation programs in most cases is now July or August 1988. For states whose legislatures are not in regular session in 1988, the schedule is one year later. The deadline for school inspections and management plans, however, is October 12, 1988.

Clearly, the current deadlines for schools prevent most states from enforcing the work practices and competency standards of accreditation for asbestos inspections and management plan development. Although this crucial stage will guide all subsequent asbestos management efforts in the schools, under the present deadlines, it will proceed without state standards and enforcement. Only perhaps 12 states are sufficiently ahead of the AHERA schedule to fulfill the accreditation and enforcement duties intended by Congress. [*Findings of the NCSL survey, State Asbestos Programs Related to the Asbestos Hazard Emergency Response Act: A Survey of State Laws and Regulations, January 1988.*]

Postponement of the deadlines will not forsake the welfare of America's children. On the contrary, the real threat is the potential for years of mismanagement of asbestos in schools because asbestos inspections and management plans are hastily prepared under an unrealistic AHERA timetable and without thorough state oversight of the plans or enforcement of accreditation standards.

I hope that this written testimony helps clarify the real concerns about AHERA's present timetable, and I request that it be included in the record for your March 15 hearing.

Sincerely,

Ted Strickland

Ted Strickland
President of the Senate
Colorado
President, NCSL

National Conference of State Legislatures

OFFICIAL POLICY

Asbestos Treatment and Removal Policy

The hazards to human health posed by asbestos fibers are well established. The widespread use of this mineral as a building material raises serious concerns about the potential health impact on large segments of the population.

Confronted with the need to assure the prompt and safe assessment, treatment, and, if necessary, removal of asbestos from schools, hospitals, and other public buildings, state legislatures are examining closely the issues relating to this new public health concern. Licensing, liability, and quality assurance are among the concerns currently under review.

The National Conference of State Legislatures (NCSL) urges the Department of Labor, the Environmental Protection Agency (EPA), and other agencies with jurisdiction over the asbestos issue to provide whatever technical assistance may be necessary to states in order to assure the formulation of effective safety standards and, specifically, to respond to federal requirements for state certification of asbestos professionals.

NCSL also urges Congress to appropriate the funds necessary to assure effective enforcement by Occupational Safety and Health Administration and EPA of asbestos safety standards during building renovation and demolition. Proposed federal requirements for inspection, management planning, and asbestos abatement in public buildings must be accompanied by technical assistance and financial support for states to protect public health from improper procedures in such a sweeping expansion of asbestos abatement activity.

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TESTIMONY OF THE
TEXAS ASSOCIATION OF SCHOOL BOARDS
BEFORE THE
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
SUBCOMMITTEE ON HAZARDOUS WASTE AND TOXIC SUBSTANCES
U.S. SENATE
MARCH 15, 1988

Chairman Baucus and members of the Subcommittee, the Texas Association of School Boards wants you to know of our support for S. 2024, a bill that would extend by 12 months the deadlines contained in the Asbestos Hazard Emergency Response Act of 1986 (AHERA).

If not extended, the deadlines contained in AHERA will create impossible performance burdens for thousands of school districts in Texas and nationwide; and may result in hasty, unsound, and inefficient compliance actions that could jeopardize the health and safety of millions of public school children and school employees. At the same time, the inefficiencies that will result from this process will surely cost the taxpayers of our state and others unnecessary millions of dollars that could be spent far better on teacher salaries or other benefits that enhance learning.

A number of factors combine to make the AHERA deadlines an unrealistic burden for many public school systems:

1. Although AHERA was passed in 1986, EPA did not release final regulations for the act until October of 1987. these regulations were published in the Federal Register October 30, 1987. Many school districts had begun asbestos inspection and management programs of one type of another prior to these dates. Thousands of other school districts had complied with the 1982 Asbestos In School Rules but waited until the final AHERA regulations were published before moving further with asbestos related projects.

   Districts in each group may be penalized for their decisions. Those who moved forward to address asbestos in the absence of final regulations may now find that their actions, though well intended, will not result in compliance with the final AHERA regulations. They must now realize the financial and other consequences of their diligence.

   Those districts that waited to see EPA's final position on AHERA now find that they have precious little time to perform all that AHERA requires of them prior to the October 12, 1988 deadline for submission of management plans. The majority of these districts were not "dragging their feet" as some suggest. They merely wanted, legitimately, the guidance of the final regulations before embarking on a program that will affect millions of lives, now and in the future.

2. In some states, EPA approved training programs are not available to accredit the asbestos building inspectors and management planners called for in the act. In Texas where few programs are available, class space is so limited that many, if not most, schools districts are not able to have their personnel trained. EPA approval of many of these training programs occurred after release of the final regulations.

   School districts eager to get on with AHERA compliance were effectively precluded from doing so until after October 30, 1987 by the absence of EPA approved training programs. Additional classes have been scheduled in Texas and other states, but still a shortage of necessary class space exists in many areas. More classes will be scheduled, but they will come on line too late for most districts to access them and then perform inspections and develop management plans prior to October 12

   Most school districts do not subscribe to the Federal Register, therefore the EPA and many state educational agencies mounted efforts to inform school districts of their responsibilities under the final regulations. During the first week in December, EPA mailed a letter and copy of the regulations to each school district in the United States. Most school districts were therefore unaware of the final regulations until just before the Christmas holidays. At the earliest, most of these districts did not begin to respond until January, 1988.

   Even if a cadre of qualified commercial inspectors been available at that point, most districts would, by state law have been required to follow a proscribed bid process to select an appropriate contractor. By so doing, the earliest date that many school districts could begin to inspect buildings would be early-to-mid-March.

   If many or most school districts will not begin building inspections until mid March or later, great pressure to complete the inspection process may result. If inspectors rush through their inspections of school buildings, some portions of buildings with asbestos containing material may be missed, resulting in potential long-term presence of asbestos in those schools.

3. Accidental exposure of asbestos containing material during the inspection process could result in incalculable damage to those near the accident site. For this reason, the best time of year to conduct inspections would be during the summer months when children and staff are not present in the buildings. However, EPA has warned school districts that should they wait until Summer to begin the inspection process, they will probably be unable to meet the October management plan deadline.

One of the major concerns of the Texas Association of School Boards with the AHERA deadlines is that it forces schools to conduct inspections hurriedly and at times of year when such haste could accidentally result in exposure of children and employees to deadly asbestos fibers.

4. In Texas and many other states, the number of laboratory samples expected to flow from the AHERA inspections will exceed the capacities of the laboratories available to process them within the time available. Many Texas laboratories are now promising accelerated processing capabilities. The public health agency in Texas advises that even with laboratories subject to EPA quality control, such speed may be achieved only at the expense of accuracy.

   We are very concerned that inaccurate readings of samples will result in one of two outcomes:

   a. we will spend millions of dollars to abate or otherwise manage asbestos that doesn't exist, or worse;
   b. we will end this process with asbestos still undetected and unmanaged in thousands of places within our schools. I think you will agree that he ultimate cost of this outcome is incalculable.

5. The management plans that are developed will guide schools in their treatment of any asbestos detected during the inspection phase. As such, great care should be taken in the development of these plans to assure that correct strategies are recommended in all situations.

   As the final step in the process prior to the October 12 deadline, the management planning is perhaps the part of the process most sensitive to deadline pressures. Planners responding to these pressures may not take time to adequately clarify ambiguities in the building assessment reports that guide their work. If errors are made in the management plans, and these are not detected, much harm can result. Yet, little time for quality control review will be available.

6. The major responsibility for quality control review of management plans in each state will ultimately rest with the agency in each state designated by the governor to approve all asbestos management plans. These agencies share a common problem, each has a minimum amount of time to review and approve submitted management plans. Failure by these agencies to approve management plans within 90 days of submissions will automatically result in approval of these plans.

   Many of these agencies simply cannot do such a critical job in such a short span of time. If those developing the management plans do not have adequate time to review them before they are submitted, and the state agencies charged with reviewing plans doe not have time to review them after the plans are received,the absence of any meaningful quality control in this process seems disturbingly apparent. Is this what Congress intended? We trust not.

7. The absence of effective quality control brings us full circle to the availability of concerned, qualified personnel to the job in the first place. In our state we see a rush to assist our schools by electricians, plumbers, and others who were first in line to receive certificates of accreditation from EPA approved training programs. As fine and well intentioned as these persons surely are, many have not been in a school building for years. Most will have no liability insurance, or at best, inadequate insurance or bonding.

   Where will these inspectors be three, five or ten years from now ? Who will be held accountable for their work should it prove flawed? Mr. Chairman, you and I both know that the ultimate weight of accountability will fall squarely on the shoulders of those who must now be forced by AHERA's deadlines and the unavailability of training for school personnel to accept whatever the market offers (at virtually any price it demands): those who govern of our nations' school districts.

   Now that EPA has finally developed model curricula and approved schools for inspection and management planning, why not give our schools adequate time to train their personnel so that the schools can self-manage some part(s) of this process? Who could be more concerned about doing the job correctly than those who live and work in school buildings? Who knows these buildings better than those responsible for them on a daily basis? Who would be more concerned about the health of children than those who have devoted their lives and careers in service to public education?

Mr. Chairman, as those charged with much public trust and responsibility, we are not unaware of the tremendous concern that so many in our country have over this issue. Many fine people have fought long and hard to enact legislation that would assure that our school children and employees are protected from the terrible consequences of exposure to asbestos. AHERA is a result of that ardent and passionate concern.

However, as we stand upon the threshold of the final effort in this long struggle, we must not let that passion so blind us to the flaws in this legislation that we allow these flaws to subvert the very goal for which these struggles were rightly made: the health and welfare of our nations' school children and employees.

We urge you to pass S. 2024 and allow our school districts adequate time to do this job efficiently, thoroughly, and most important, safely.

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